Broadbrush Taxation: Tax Law for the Non–Tax Attorney

Cosponsored by the Taxation Section

Thursday, October 19, 2017
8:30 a.m.–4:30 p.m.

6.75 General CLE credits
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# TABLE OF CONTENTS

Schedule ....................................................................................................................... v

Faculty ......................................................................................................................... vii

1. **Federal and State Tax Update** ................................................................. 1–i
   — Robert Manicke, *Stoel Rives LLP, Portland, Oregon*
   — Kevin Pearson, *Stoel Rives LLP, Portland, Oregon*

2. **Tax Considerations for Choice of Business Entity** .............................. 2–i
   — Berit Everhart, *Arnold Gallagher PC, Eugene, Oregon*

3. **Estate Tax: Alive and Well in Oregon** ................................................. 3–i
   — Barbara Jo Smith, *Heltzel Williams Law Firm, Salem, Oregon*

4. **Tax Collection Issues** ................................................................................. 4–i
   — Sarah Lora, *Statewide Tax Clinic, Legal Aid Services of Oregon, Portland, Oregon*

5. **Leverage the Benefits of Teamwork Between Attorneys and CPAs—Presentation Slides** .............................. 5–i
   — Shawn Bargouti, CPA, CISA, *US Tax Services, Portland, Oregon*
   — Hertsel Shadian, *Hertsel Shadian Attorney at Law LLC, Tualatin, Oregon*

6. **Successor Liability for Taxes: I Have to Pay What?!** ........................... 6–i
   — Caitlin Wong, *CW Law, Portland, Oregon*

7. **Hot Topics in 1031 Exchanges** ................................................................. 7–i
   — Jeneé Hilliard, *Miller Nash Graham & Dunn LLP, Portland, Oregon*

8. **You Can’t Run and You Can’t Hide: A Primer on Oregon Property Taxation** .............................. 8–i
   — Sam Zeigler, *CKR Law Group, Lake Oswego, Oregon*
7:45  Registration

8:30  Federal and State Tax Update
   ♦ Our 2017 legislature
   ♦ Cases of interest
   ♦ What’s ahead?
   ♦ TEFRA repeal
   ♦ Tax reform
   Robert Manicke, *Stoel Rives LLP, Portland*
   Kevin Pearson, *Stoel Rives LLP, Portland*

10:00  Break

10:15  Tax Considerations for Choice of Business Entity
   ♦ Tax classification of different business entities
   ♦ Tax characteristics of various tax classifications
   ♦ Tax considerations when selecting an entity
   Berit Everhart, *Arnold Gallagher PC, Eugene*

11:15  Estate Tax: Alive and Well in Oregon
   ♦ Old standards to save estate tax may cost more in capital gains taxes
   ♦ Loans to children
   ♦ Inclusion of out-of-state property
   ♦ Disclaimer planning pros and cons
   Barbara Jo Smith, *Heltzel Williams Law Firm, Salem*

Noon  Lunch

12:45  Collection Alternatives with the IRS or Oregon Department of Revenue
   ♦ Communicating with the IRS and Oregon Department of Revenue
   ♦ Federal alternatives—installment agreements, offer in compromise, collection due process hearings
   ♦ State alternatives—payment plans, settlement offers, garnishment modifications
   ♦ Client financial analysis tips and tricks
   Sarah Lora, *Statewide Tax Clinic, Legal Aid Services of Oregon, Portland*

1:15  Working with the CPA: Finding the Collaboration Sweet Spot
   ♦ Leave the egos at the door: working and communication strategies
   ♦ Know when to stay in your lane: leveraging the respective strengths of each professional
   ♦ Delegating tasks to maximize value and efficiency for the client
   ♦ Considerations in crossover representation, including CPA-client privilege limits
   Shawn Bargouti, CPA, CISA, *US Tax Services LLP, Portland*
   Hertsel Shadian, *Hertsel Shadian Attorney at Law LLC, Tualatin*
2:00 Successor Liability for Taxes: I Have to Pay What?!
   ♦ How successor liability differs from transferee liability
   ♦ Choice of entity considerations
   ♦ Stock versus asset acquisitions
   ♦ Drafting agreements to control risk
   ♦ Payroll and state tax special considerations
   ♦ The importance of the nominee and alter ego doctrines
   Caitlin Wong, CW Law, Portland

2:30 Break

2:45 Hot Topics in 1031 Exchanges
   ♦ Qualified property and Exelon Corp.
   ♦ Reverse exchanges
   ♦ Improvement exchanges and Estate of Bartell
   ♦ Related-party exchanges
   Jeneé Hilliard, Miller Nash Graham & Dunn LLP, Portland

3:45 You Can’t Run and You Can’t Hide: A Primer on Oregon Property Taxation
   ♦ Measure 50 and maximum assessed value
   ♦ The appeals process
   ♦ New construction and business enterprise zone exemptions
   Sam Zeigler, CKR Law Group, Lake Oswego

4:30 Adjourn
FACULTY

**Shawn Bargouti, CPA, CISA, US Tax Services LLC, Portland.** Mr. Bargouti is the owner of US Tax Services LLC, which specializes in servicing individuals and small businesses in the areas of tax, accounting, payroll, audit representation, and business consulting. He is an active, practicing CPA with over 20 years of progressive experience working for both national CPA firms and Fortune 500 companies in various roles centered on tax, financial statement audits, and business risk management.

**Berit Everhart, Arnold Gallagher PC, Eugene.** Ms. Everhart’s practice focuses on business and corporate law, with an emphasis on federal and state taxation. Her practice includes business sales and acquisitions, entity selection and formation, individual and entity taxation, and estate planning for individuals and business owners. Ms. Everhart is a member of the Oregon State Bar Business Law Section Newsletter Editorial Committee and is president of the Eugene Springfield Tax Association. Ms. Everhart holds an LL.M in taxation from New York University School of Law. She is admitted to practice in Oregon and New York.

**Jeneé Hilliard, Miller Nash Graham & Dunn LLP, Portland.** Ms. Hilliard’s primary practice focus is commercial real estate transactions, and she has significant experience advising clients with respect to structuring and documenting 1031 exchanges. Ms. Hilliard is the coauthor of the “Like-Kind Exchanges” chapter in the *Oregon Real Estate Deskbook* (OSB Legal Pubs 2015).

**Sarah Lora, Statewide Tax Clinic, Legal Aid Services of Oregon, Portland.** Ms. Lora has been the supervising attorney of the Legal Aid Services of Oregon Statewide Tax Project since April 2016. Prior to that, she worked for 13 years as an attorney in Legal Aid’s Farmworker Program, where she concentrated her practice on employment litigation and tax controversy.

**Robert Manicke, Stoel Rives LLP, Portland.** Mr. Manicke heads the firm’s Benefits, Tax and Private Client group and practices in the area of state, local, and employment taxation. He represents clients before the Oregon Tax Court and the Oregon Supreme Court and in audits and other administrative proceedings in numerous states. He is chair of the Oregon Business Association Business and Finance Committee, chair of the Oregon State Bar Taxation Section Tax Laws Committee, a practitioner member of the Council on State Taxation, a member of the ABA Tax Section State Tax Committee and Employment Tax Committee, and a member of the American College of Tax Counsel. Mr. Manicke is the 2010 recipient of the Oregon State Bar Taxation Section Award of Merit. He is admitted to practice in Oregon, California, Idaho, and Washington.

**Kevin Pearson, Stoel Rives LLP, Portland.** Mr. Pearson chairs the firm’s Tax Section and serves as a member of the firm’s Executive Committee. His practice focuses on all types of federal income tax matters, including transactional matters and tax controversies. He regularly advises clients with respect to partnership transactions, mergers and acquisitions, corporate and project finance matters, real estate transactions, equity compensation issues, and other transactional matters. He also represents clients in IRS audits, appeals, and US Tax Court matters. He is a frequent speaker on a number of tax topics.

**Hertsel Shadian, Hertsel Shadian Attorney at Law LLC, Tualatin.** Mr. Shadian’s practice focuses on taxation, general business law, estate planning, and nonprofit law. He is a member of the Oregon State Bar Taxation Section and secretary of the OSB Solo and Small Firm Section. He holds an LL.M. in Taxation. He is admitted to practice in Oregon and Washington.

**Barbara Jo Smith, Heltzel Williams Law Firm, Salem.** Ms. Smith practices in the areas of Estate Planning, Probate and Trust Administration, Charitable Gift Planning, Business Law, Family Business, and Tax Law. She is past president of the Willamette Valley Estate Planning Council and chair-elect of the Oregon State Bar Taxation Section. She also has served as an adjunct professor at Willamette University College of Law, teaching the Estate and Gift Tax course, and has spoken at a variety of continuing legal education courses.
Caitlin Wong, CW Law, Portland. Ms. Wong practices estate planning, business law, and tax law. She is a member of the Oregon State Bar Solo and Small Firm Section and Taxation Section. She is admitted to practice in Oregon and Washington.

Sam Zeigler, CKR Law Group, Lake Oswego. Mr. Zeigler represents the interests of lenders, developers, and other owners of commercial property, both as a litigator and negotiator. His current focus is mitigating the property-tax liabilities of commercial and industrial property owners and tenants. He is a member of the Gus J. Solomon Inn of Court and serves as a mentor in the reentry program for recently released offenders administered by the U.S. District Court in Portland. Mr. Zeigler is licensed to practice law in Oregon, Tennessee (inactive), and Georgia (inactive).
Chapter 1

Federal and State Tax Update

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Contents

2017 Oregon Tax Update

I. Income Tax General and Administrative Provisions ........................................ 1–1
   A. Reconnection to the Internal Revenue Code ........................................... 1–1
   B. Interest Computation .............................................................................. 1–1
   C. Tax Not Paid with a Return Is Considered Assessed on Later of Original Due Date or Date Filed .......................................................... 1–1
   D. New Hotline for C and S Corporations .................................................. 1–1
   E. Tax Practitioner Priority Assistance Program ......................................... 1–2
   F. Financial Institutions Data Match .......................................................... 1–2

II. Personal Income Tax ..................................................................................... 1–2
    A. Expansion of Rules Governing Conflicting Taxpayer Claims—It’s Not Just for Dependent Claims Anymore ........................................ 1–2
    B. Lottery Withholding ................................................................................. 1–2
    C. Increase in Earned Income Credit .......................................................... 1–3

III. Business Taxation .......................................................................................... 1–3
    A. Repeal of the Functional Test for UDITPA Apportionment ...................... 1–3
    B. Adoption of New MTC “Apportionable Income” Terminology .............. 1–3
    C. Market-Based Sourcing for Sales of Services and Intangible Property .... 1–3
    D. Determination of a Unitary Group .......................................................... 1–4
    E. 100 Percent Dividends-Received Deduction for Dividends Paid by Insurance Subsidiary ................................................................. 1–4

IV. Income Tax Credits and Incentives ............................................................... 1–4
    A. Omnibus Tax Credit Extension/Modification Bill ..................................... 1–4
    B. Credits Cannot Be Used To Pay the Corporate Minimum Tax ............... 1–5
    C. Working Family Dependent Care Credit ............................................... 1–5
    D. Earned Income Credit: Enhanced Publicity Requirements for Employers 1–6

V. Income Tax Cases .......................................................................................... 1–6
    A. Costs of Performance ............................................................................. 1–6
    B. Court Rejects Complaint Not Filed by US Mail and Received Late; Timely Mailed Copy of Complaint Is No Cure Because Mailing Did Not Include Filing Fee .......................................................... 1–6
    C. Economic Nexus Applies in Oregon ....................................................... 1–7
    D. Warranty Repair Work by a Retailer Causes an Out-of-State Distributor to Lose PL 86-272 Protection ................................................................. 1–7

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### Chapter 1—Federal and State Tax Update

#### Contents (continued)

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>E.</td>
<td>Engaging in Any Broadcasting Activities Subjects All Business Income, Other Than Income from the Sale of Real or Tangible Property, to the Broadcaster Apportionment Rules</td>
</tr>
<tr>
<td>F.</td>
<td>Partnership Returns Filed in Another State Extend the Period of Limitations on Refunds</td>
</tr>
<tr>
<td>G.</td>
<td>Department’s Failure to Review Documents Submitted During an Audit Invalidates a Notice of Deficiency</td>
</tr>
<tr>
<td>H.</td>
<td>The Department of Revenue May Make Changes to a Closed Year to Assess Tax in an Open Tax Year</td>
</tr>
<tr>
<td>I.</td>
<td>Regularly Occurring Activity Unrelated to a Taxpayer’s Unitary Business Does Not Cause Income to Satisfy the Transactional Test</td>
</tr>
<tr>
<td>VI.</td>
<td>Property Tax Law Changes (General and Administrative Provisions)</td>
</tr>
<tr>
<td>A.</td>
<td>Deferred Billing Credits</td>
</tr>
<tr>
<td>B.</td>
<td>Certain Cities Authorized to Define “Area” for Changed Property Ratio Purposes</td>
</tr>
<tr>
<td>C.</td>
<td>Paperwork Reduction for Avoidance of Tax on Low-Dollar Personal Property</td>
</tr>
<tr>
<td>VII.</td>
<td>Property Tax Exemptions and Incentives</td>
</tr>
<tr>
<td>A.</td>
<td>Strategic Investment Program: Increase in Taxable Portion of Projects Located in Rural Areas; Increased Cap on Community Service Fee</td>
</tr>
<tr>
<td>B.</td>
<td>Enterprise Zone Wage Requirements</td>
</tr>
<tr>
<td>C.</td>
<td>Enterprise Zone Technical Amendments</td>
</tr>
<tr>
<td>D.</td>
<td>No Tax on Publicly Owned Property Leased to Taxable Lessee and Disqualified from Special Assessment</td>
</tr>
<tr>
<td>E.</td>
<td>Forestland: Disqualification from Special Assessment Is Deemed to Occur the Previous January 1; Assessor Must Notify Before August 15</td>
</tr>
<tr>
<td>F.</td>
<td>Opt-in Affordable Housing Exemption</td>
</tr>
<tr>
<td>G.</td>
<td>Extension of Alternative Energy Systems Property Tax Exemption</td>
</tr>
<tr>
<td>H.</td>
<td>Exemption for Property of LLC Owned by Nonprofits or Public Bodies</td>
</tr>
<tr>
<td>I.</td>
<td>New Local Opt-in Exemption for Seismically Retrofitted Property</td>
</tr>
<tr>
<td>VIII.</td>
<td>Estate Tax</td>
</tr>
<tr>
<td>A.</td>
<td>Only a Single Penalty Applies upon Initial Failure to File and Failure to Pay</td>
</tr>
<tr>
<td>IX.</td>
<td>Excise Taxes</td>
</tr>
<tr>
<td>A.</td>
<td>New 0.1% Gross Wages</td>
</tr>
<tr>
<td>B.</td>
<td>New 0.1% Tax on “Periodic Payments”</td>
</tr>
<tr>
<td>C.</td>
<td>Privilege and Use Tax on New Vehicles</td>
</tr>
</tbody>
</table>

**Presentation Slides—Federal Tax Update** | 1–17
**Presentation Slides—Oregon Tax Update** | 1–25


Oregon generally is a “rolling reconnect” state, incorporating the Internal Revenue Code, including future amendments, for purposes of defining taxable income. For a variety of other purposes, however, this reconnection law generally updates Oregon’s connection to the Internal Revenue Code from December 31, 2015 to December 31, 2016.


This new law replaces the monthly or partial monthly method for computing interest rate with an annual percentage rate computed daily. The new method applies to deficiencies and to refunds. It is intended to conform to generally accepted accounting principles. This method will apply to income taxes, estate tax and most other tax programs administered by the Department of Revenue, except property tax. Applies to tax deficiencies or refunds owing as of January 1, 2018.

C. Tax Not Paid with a Return Is Considered Assessed on Later of Original Due Date or Date Filed (2017 Or Laws ch 23, HB 2285, Effective October 6, 2017).

This new law changes the date when underpaid tax is considered assessed, in the case of a taxpayer who submits a return with payment of less than the amount due. Existing law treats the underpaid amount as assessed on the extended due date or the date of actual filing, whichever is later. The new law treats the underpaid amount as assessed on the original due date, without regard to extensions, or the date of actual filing, whichever is later. The effect of the law change is to prevent a taxpayer from delaying the commencement of collection procedures, and the imposition of “Tier II” interest, by obtaining an extension to file the return. Applies to returns originally due on or after January 1, 2018.


This new law requires the Department of Revenue to establish a program for representatives of C corporations and S corporations to contact the Department by dedicated phone and other electronic means to resolve issues and ask questions concerning Oregon corporate income and excise tax laws in an expedited manner. The Department is required to clearly list the dedicated
telephone number and means on any notice or letter the department sends to a business customer and is required to track customer satisfaction with the program.


This new law requires the Department to give priority to certified public accountants and other tax practitioners who “have questions about or wish to resolve issues concerning Oregon tax laws and the application of Oregon tax laws to personal income tax accounts.” The program must: (a) serve as the first point of contact for tax practitioners; (b) dedicate trained employees, a telephone number and other electronic means of communication exclusively for the tax practitioners’ use; and (c) provide resources that are sufficient to answer questions and resolve issues in an expedited manner. The department must make the program available to tax practitioners who provide tax advice, prepare income taxes or act on an individual taxpayer’s behalf with respect to an issue related to the taxpayer’s account with the department. Minimum areas of assistance are (a) locating and applying payments; (b) understanding Department communications, including notices and letters; (c) receiving general procedural guidance and estimates of the length of time that a procedure will take; (d) making account adjustments; (e) securing taxpayer income verifications; and (f) receiving transcripts of taxpayer accounts. The Department is required to track customer satisfaction with the program.


This law requires financial institutions to participate in a “data match” program, including by transmitting data to the Department of Revenue quarterly. The law is intended to enable the Department to more easily locate a debtor’s accounts for collection purposes, without first conducting and paying for a search among multiple financial institutions where the debtor might have an account. Generally operative July 1, 2018.

II. Personal Income Tax


Existing law requires the Department to arrange a meeting among taxpayers (typically parents) filing conflicting claims for the same dependent. The new law broadens the “joint determination” requirement to apply to “conflicting returns or reports addressing an item of income, deduction or credit under the personal income tax laws.” Applies to tax years beginning on or after January 1, 2018.


The new law lowers the threshold above which personal income tax is required to be withheld from an Oregon Lottery payment, from $5,000 to $1,500, applicable on January 1, 2018.
C. Increase in Earned Income Credit (2016 Or Laws ch 98, HB 4110).

Sections 1 and 2 of this law increase the Oregon Earned Income Tax Credit from 8% of the federal credit to 11% for taxpayers with a dependent under the age of three at the close of the tax year. Applies to tax years 2017 through 2019.

III. Business Taxation


Conforming to an MTC change, this new law amends the definition of “sales” by including only transactional test apportionable income. Accordingly, sales resulting in apportionable income solely because of the functional test are not included in the numerator or denominator of the Oregon sales factor. The change conforms the ORS 314.610(7) definition to the longstanding definition in the Department of Revenue’s administrative rule, OAR 150-314-0425(1). In a related change, the law also repeals the special “anti-churning” rules in ORS 314.665(6)(a) and (b) for sales of intangible property and the exclusion for receipts from occasional sales – these special rules are no longer necessary because sales are limited to sales giving rise to transactional test apportionable income. Applies to tax years beginning on or after January 1, 2018.


This new law conforms Oregon law to the 2015 amendment made by the Multistate Tax Commission to Article IV, § 1 of the Multistate Tax Compact by replacing “business income” and “nonbusiness income” with “apportionable income” and “non-apportionable income” and by broadening the definition of apportionable income, among other things replacing the “integral part” requirement with a “related to” standard. Applies to tax years beginning on or after January 1, 2018.


As widely anticipated, Oregon has adopted a market-based sourcing rule governing sales of services and intangible property, which applies to tax years beginning on or after January 1, 2018. An Oregon administrative rule already purports to require a market-based result in the case of certain intangible property, but existing law applies a cost-of-performance rule for services. The Department of Revenue has issued draft administrative rules that would implement the change by adopting a modified version of the Multistate Tax Commission’s model regulations, as of February 24, 2017, under Article IV, Section 17 of the Multistate Tax Compact.

This law expands the scope of inquiry for purposes of determining whether two or more corporations that are included in the same consolidated federal return are also engaged in the same unitary business. Prior law generally prohibited a non-U.S. corporation from being considered, for example when determining whether two of its subsidiaries were unitary with each other. The new law allows any corporation owned or controlled by the same interests to be considered in an effort to determine whether two or more related corporations are unitary with each other. Applies to tax years beginning on or after January 1, 2018.

E. 100 Percent Dividends-Received Deduction for Dividends Paid by Insurance Subsidiary (2017 Or Laws ch 316, SB 153, Effective October 6, 2017).

The Oregon Tax Court decided in 2012 that dividends paid by an insurance subsidiary that are eliminated by the federal consolidated return rules remain eliminated for Oregon tax purposes even though the insurance payer and the non-insurance recipient are required to file separate Oregon returns due to their different apportionment factors. See StanCorp Financial Group, Inc. v. Dep’t of Revenue, TC-RD 5039 (Aug 2, 2012). The new law amends ORS 317.715 to undo the federal elimination of the dividend. However, the law also amends ORS 317.267 to provide the non-insurance recipient of the dividend with a 100 percent Oregon dividends-received deduction. Accordingly, although the new law changes the statutory provision at issue in StanCorp, the overall result of StanCorp (no Oregon tax on the dividend) remains the same. The change applies to tax years open to audit or under appeal or a claim of refund.

IV. Income Tax Credits and Incentives


The legislature periodically reviews each income tax credit statute, generally reexamining one-third of the credits every odd-numbered year. Most credits have a sunset date that is consistent with this six-year review cycle. In addition to changes covered elsewhere in this outline, this year’s biennial omnibus statute extends, modifies, sunsets or adds the following credits:

- **Credit for project in a reservation enterprise zone** (ORS 285C.309). Credit may not be claimed for tax years beginning on or after January 1, 2028.

- **Affordable housing lenders** (ORS 317.097). Certificate may not be issued to lender on or after January 1, 2026. The law also raises the statewide cap on total credits on outstanding loans from $17 million to $25 million for tax years beginning on or after January 1, 2018.

- **New bovine manure credit** (to be added to ORS ch 315). Allows credit of $3.50 per wet ton of bovine manure in Oregon used, in Oregon, as biofuel or to produce biofuel. Credit to be certified by Oregon Department of Agriculture. Credit is transferable; rules similar
to existing biomass credit apply. A $5 million statewide cap on all credits applies. Credit applies to tax years beginning on or after January 1, 2018 and before January 1, 2022.

- **Existing biomass tax credit** (ORS 315.141, 315.144) applies to tax years beginning before January 1, 2018.

- **Rural medical providers** (ORS 315.613). Credit generally may not be claimed for tax years beginning on or after January 1, 2022. Saving clauses and other modifications apply. Note that, for tax years beginning on or after January 1, 2018, the credit is modified to impose a cap on the adjusted gross income of the physician of $300,000 for the tax year, except for general practitioners and certain obstetricians.

- **Fish screening** (ORS 315.138). The Department of Fish and Wildlife may not issue a preliminary certificate of approval after January 1, 2024.

**B. Credits Cannot Be Used To Pay the Corporate Minimum Tax (2017 Or Laws ch 610, HB 2066, Effective October 6, 2017).**

Sections 16 and 17 of HB 2066 permanently deny corporate taxpayers the ability to apply credits against Oregon’s gross receipts-based minimum tax, which ranges in amount up to $100,000. Taxpayers and the Department of Revenue have disputed this issue for at least the past seven years, resulting in an Oregon Supreme Court case that was later overturned by legislation. See *Con-way, Inc. v. Department of Revenue*, 353 Or 616 (2013); ORS 317.090, as amended by 2017 Or Laws ch 701 (2015). The 2015 change applied to tax years January 1, 2015 to January 1, 2021. The 2017 change removes the sunset date, making the restriction permanent for tax years beginning on or after January 1, 2015.

**C. Working Family Dependent Care Credit (2017 Or Laws ch 638, SB 162, Effective October 6, 2017).**

The 2015 legislature created the Working Family Dependent Care credit, as codified in ORS 315.264. At the time, the legislature sought to “merge” two prior credits, the Working Family Child Care credit and the Dependent Care credit. The new 2017 law is intended to make both technical and policy clarifications to the resulting merged credit. The Staff Measure Summary describes the changes as follows:

“Extends the tax credit to non-married taxpayers seeking work or going to school; limits qualifying expenses to the amount of income earned in Oregon; disallows the credit for amounts of dependent care paid with pre-tax dollars; aligns with federal law the timing of the date for determining the age qualifying dependents; requires taxpayers to have earned income to claim the tax credit; and prohibits interest from being paid on the refundable portion of the tax credit. Clarifies that assessing a penalty does not need to be done specifically by the DOR director.”

The changes apply to tax years beginning on or after January 1, 2018.
D. Earned Income Credit: Enhanced Publicity Requirements for Employers

This new law requires each employer to include with an employee’s IRS Form W-2 a notice alerting employees to the existence of the federal and state earned income credit. The law also requires the Bureau of Labor and Industries to update employer-required posters to include such a notice, and the law requires the Oregon Employment Department to provide information about the credits to individuals receiving unemployment insurance benefits.

V. Income Tax Cases

A. Costs of Performance.

In AT&T Corp. v. Dep’t of Rev., 357 OR 691 (2015). The Oregon Tax Court held that, for purposes of determining the numerator of the Oregon sales factor, the relevant costs of performance are limited to the direct costs only incurred because of the revenue producing activity (an “incremental cost” test). In affirming the resulting judgment, the Oregon Supreme Court left open the question of whether an incremental cost test applied.

In Apollo Education Group, Inc. v. Department of Revenue, TC-MD 150352C (Or Tax Ct Mag Div Aug 24, 2017), the Magistrate Division of the Oregon Tax Court applied the incremental cost test to determine the costs of performance for a taxpayer that provided online educational courses.

As part of its analysis, the Apollo court first determined that the provision of a specific course section was the income-producing activity. Activities to ensure that students graduated, while an important part of the business model, were not income-producing activities and the court disregarded those costs. Instead, the court held that the income-producing activity of providing course sections was composed of the activities of the faculty, the curriculum development team, and the online platform. However, the court held that costs related to curriculum development and the online platform were not direct costs taken into account for purposes of determining the costs of performance – these costs were analogous to the costs incurred by AT&T in maintaining its network. Accordingly, the only costs of performance were the faculty costs.

B. Court Rejects Complaint Not Filed by US Mail and Received Late; Timely Mailed Copy of Complaint Is No Cure Because Mailing Did Not Include Filing Fee.

As background, ORS 305.280(2) generally provides that a complaint challenging a notice of assessment must be filed within 90 days after the date of the notice. ORS 305.418 generally provides that a complaint filed through the United States Postal Service is deemed filed on the postmark date, but the statute includes a safe harbor if a declaration of mailing is also mailed to the Tax Court. ORS 305.490(1)(a) requires a plaintiff to pay the filing fee “at the time of filing for each complaint.”

The Magistrate Division of the Tax Court has held that a complaint was not timely filed because the taxpayer sent the original complaint through the US Postal Service without a postmark (using postage through Pitney Bowes), without a declaration of mailing, and without enclosing the
filing fee. Although the taxpayer claimed to have deposited the complaint in the mail before the due date, the complaint did not arrive until after the due date, and the court held that the taxpayer could not rely on a postmark date (because there was no postmark) or on the declaration of mailing safe harbor (because the taxpayer had not prepared a declaration of mailing).

The decision also implies that, even if the complaint otherwise had been timely filed, the court still would have dismissed the case because the taxpayer failed to include the check for the filing fee with the complaint—the taxpayer sent the check separately, along with a copy of the complaint, via UPS in a package that arrived after the due date. Because the check arrived late and could not have been found timely under the postmark or declaration of mailing rule (because the taxpayer used UPS instead of the US Postal Service), the court did not address whether the filing of a “copy” of the complaint, rather than the original, would have satisfied the timely filing rule. American Express Company & Subsidiaries v. Dep’t of Revenue, TC-MD 170031R (June 6, 2017).

C. Economic Nexus Applies in Oregon. BROADBRUSH!

The Regular Division of the Oregon Tax Court has held that a taxpayer can have sufficient nexus to be subject to Oregon corporation excise tax or Oregon corporation income tax based on economic nexus, without any physical activities. Capital One Auto Fin. Inc. v. Dep’t of Revenue, TC-RD 5197 (Dec. 23, 2016). Based on prior Oregon Supreme Court case law, the court held that economic nexus applied to the taxpayer for 2006-2008 even though (1) the administrative rule was not promulgated until 2008 and (2) during notice and comment prior to final promulgation, the Department stated that the rule would only be applied prospectively. The judgment has been appealed to the Oregon Supreme Court.

D. Warranty Repair Work by a Retailer Causes an Out-of-State Distributor to Lose PL 86-272 Protection. BROADBRUSH!

Expanding on Ann Sacks Tile & Stone, Inc. v. Dept of Rev, 20 OTR 377 (2011), appeal dismissed 352 Or 380 (2012), the Magistrate Division has determined that Pub L No. 86-272 does not protect a retailer that replaces tires that the retailer determined were covered by the distributor’s warranty based on the age or degree of tread wear. The court noted that the retailer offered its own warranty to customers, and that the customers never made claims under the distributor’s warranty; only the retailer submitted claims to the distributor. In two years, only two retail customers contacted the distributor about problems with the tires. (The distributor referred them to the retailer.) Nevertheless, the court held that the retailer’s services of removing, inspecting and returning the tires to the distributor, in exchange for payment or credit to the retailer, constituted work “on behalf of” the distributor and exceeded the protection of PL 86-272. Cheng Shin Rubber USA, Inc. v. Dep’t of Rev., TC-MD 150268D (Mar. 31, 2017).

E. Engaging in Any Broadcasting Activities Subjects All Business Income, Other than Income from the Sale of Real or Tangible Property, to the Broadcaster Apportionment Rules.

Pursuant to the Oregon version of UDITPA, apportionable income generally is apportioned based on the ratio of the taxpayer’s Oregon sales to its everywhere sales. One industry subject to
special apportionment rules is interstate broadcasting: a taxpayer engaged in interstate broadcasting apportions gross receipts from transactions in the regular course of its trade or business, other than revenue from the sale of real or tangible personal property, based on the ratio of Oregon subscribers to all subscribers. For this purpose, broadcasting generally is defined as the transmission of one-way electronic signals. The Regular Division of the Oregon Tax Court has held that if a taxpayer engages in broadcasting (i.e., one-way electronic signal transmission) all of its gross receipts, other than revenue from the sale of real or tangible personal property, are apportioned using the subscriber ratio. In reaching this decision, the court rejected the taxpayer’s argument that the subscriber ratio should only apply to its one-way electronic signal transmission, with the revenue from its other activities (e.g., two-way transmissions) apportioned using Oregon UDITPA. Comcast Corp. v. Dep’t of Revenue, TC-RD 5265 (Oct. 11, 2016).

F. Partnership Returns Filed in Another State Extend the Period of Limitations on Refunds.

Subject to several exceptions, Oregon provides a three-year period of limitations for the Department to assess tax or for a taxpayer to claim a refund. One of the exceptions is ORS 314.410(10)(a), which provides that, for amounts attributable to a pass-through entity, the assessment or refund period does not expire until three years after the date of filing of the return by the pass-through entity. The Magistrate Division of the Oregon Tax Court has ruled that this extension is not limited to Oregon returns filed by a pass-through entity. Accordingly, a pass-through entity filing returns in another state increasing the tax owed in that other state extended the period of limitations for a refund claim by Oregon individuals seeking the increase in the credit for taxes paid to other states. Tomseth v. Dep’t of Rev., TC-MD 150434C (Or Tax Mag Div Aug. 23, 2016).

G. Department’s Failure to Review Documents Submitted During an Audit Invalidates a Notice of Deficiency.

The Oregon Department of Revenue must issue a notice of deficiency before the expiration of the period of limitations (generally, three years, but subject to exceptions including extension by agreement). After issuing a notice of deficiency, the Department has one year to issue the notice of assessment. Oregon law requires that the adjustments in the notice of deficiency be “made in good faith and not for the purpose of extending the period of assessment.” The Magistrate Division of the Oregon Tax Court has ruled that a notice of deficiency issued in a rush to comply with the statute of limitations was not issued for the purposes of extending the “period of assessment” because the period of assessment is the one-year period that begins after the notice of deficiency is filed, and not the period of limitations for issuing the deficiency. (The court contrasted a prior case in which the Department failed to assess the tax within one year and simply issued a second set of deficiency notices in order to start a new one-year period.) However, the Magistrate Division nevertheless ruled that the notice of deficiency was not issued in good faith because the record demonstrated that the Department issued the notice of deficiency without reviewing the documents submitted by the taxpayer in response to a proposed audit report. That is, the Department did not act in good faith when it issued a notice of deficiency to comply with statute of limitations requirements, without proper review of evidence undermining the Department’s adjustments. Enyart v. Dep’t of Rev., TC-MD 150446N (Or Tax Mag Div Sept. 15, 2016)
H. The Department of Revenue May Make Changes to a Closed Year to Assess Tax in an Open Tax Year.

Consistent with prior Tax Court decisions, the Oregon Supreme Court has upheld the right of the Department of Revenue to make changes in a year closed to audit that reduce the amount of net operating loss the taxpayer can carry forward to a year open to audit. The Regular Division of the Oregon Tax Court had ruled against the Department, pointing out that the Department had raised the carryover issue in a counterclaim and stating that the Department failed to carry its burden of proof. The Regular Division also, however, stated that the statute of limitations barred the Department from challenging the amount of the net operating loss. The Oregon Supreme Court upheld the general principle that the Department can make changes to a closed year to determine the tax liability in an open year, and remanded the case to the Regular Division for further proceedings. *Hillenga v. Dept. of Rev.*, 358 Or 178, 361 P3d 598 (2015).

I. Regularly Occurring Activity Unrelated to a Taxpayer’s Unitary Business Does Not Cause Income to Satisfy the Transactional Test.

Oregon uses two alternative tests for determining whether income is business income: the transactional test (income arising from transactions and activity in the regular course of the taxpayer’s trade or business) and the functional test (income from property for which the acquisition, management, use or disposition is an integral part of the taxpayer’s trade or business). The Magistrate Division of the Oregon Tax Court has held that (1) gain from the sale of a minority interest in a corporation and (2) operating income from a limited liability company did not satisfy the transactional test. The taxpayer in the case is the nation’s largest title insurance writer and operator. In addition to this title insurance business, the taxpayer periodically acquired and disposed of interests in companies engaged in unrelated businesses (“about six” such transactions over the course of approximately 25 years). The corporate subsidiary at issue was a workers’ compensation claims administrator, and the limited liability company at issue held interests in restaurants and a pie manufacturer. The Oregon Department of Revenue asserted that the frequency of these acquisitions and dispositions resulted in the gain or income satisfying the transactional test. The Magistrate Division of the Oregon Tax Court rejected this, instead holding that there was not a sufficient connection between the acquired businesses and the title insurance business. The Department had conceded that the functional test was not satisfied. *Fidelity National Financial, Inc. v. Department of Revenue*, TC-MD 140440D, 2016 WL 198149 (Or Tax Mag Div, Jan 15, 2016).

VI. Property Tax Law Changes (General and Administrative Provisions)


A 2011 law allowed a county assessor to apply a credit with respect to property that is the subject of a large tax appeal (a dispute involving more than $1 million in tax). This so-called “deferred billing credit” allowed the taxpayer to either not pay the credited amount in the first place, or to receive a refund of tax already paid for the tax year. This prevented the county from owing interest at the statutory rate of 12 percent per year to the extent the applicable tribunal determined the taxpayer had been overassessed.
The new law eliminates the “deferred billing credit” and replaces it with a “potential refund credit.” Unlike a deferred billing credit the new potential refund credit is not actually paid out to the taxpayer. The taxpayer must still pay the entire tax assessed by the regular due date or dates in the annual property tax cycle. If the assessor declares a potential refund credit, the county treasurer is required to “withhold” the cash amount of the credit, but the treasurer is free to commingle the withheld amount with other county moneys as long as it is accounted for separately. The new law limits the interest to the actual amount paid on the account.


An Oregon constitutional provision generally referred to as Measure 50 limits the assessed value of property to the lesser of the property’s real market value (“RMV”) or maximum assessed value (“MAV”). Subject to certain exception events, the MAV can increase by only 3 percent per year. One of the exception events is the addition of new property. The initial MAV of new property equals the product of the RMV of the property and the applicable “changed property ratio” – generally, the ratio of the average MAV of property of a certain class (e.g., residential) in an area to the average RMV of property in the same class and the same area.

Except for centrally assessed property, the applicable “area” is the county. This creates disparities if the average RMV or MAV in a city differs from the average RMV or MAV in another city in the same county.

The new law authorizes a city, by ordinance or resolution, to define “area” to mean the city for purposes of computing the maximum assessed value of property. The law limits the authorization only to a city of which a majority of the population resides in a county with a population greater than 700,000. Currently, Multnomah County is the only county that satisfies this population threshold, and the change generally is intended to benefit the City of Gresham. Applicable to assessment years beginning on or after January 1, 2018, with the written consent of the assessor of the county in which the city adopting the definition is located, or to assessment years beginning on or after January 1, 2019 without assessor consent.


Existing law eliminates tax on personal property with an assessed value less than $12,500 (subject to indexing), but the taxpayer is required to file an annual statement to claim the exclusion. Instead of an annual filing, the new law allows the assessor to send the taxpayer a notice asking the taxpayer to file a report only if the taxpayer has added or removed taxable personal property since the prior year.

A specific nontaxable threshold applies to manufactured structures. That specific threshold generally is $12,500, but the new law increases that specific threshold to $25,000 for manufactured structures in Multnomah County or Washington County.
VII. Property Tax Exemptions and Incentives

A. Strategic Investment Program: Increase in Taxable Portion of Projects Located in Rural Areas; Increased Cap on Community Service Fee (2017 Or Laws ch 490, SB 936, Effective October 6, 2017).

Oregon has a variety of property tax abatement programs to encourage investment in large projects. These include the strategic investment program (“SIP”), which generally provides a fifteen-year exemption for a portion of the property in exchange for an annual community service fee and other locally imposed requirements. The real market value of the project up to a capped amount remains taxable. The new law increases the capped taxable portion of a project located in a rural area from $25 million to $50 million if the total cost is greater than $500 million, and to $100 million if the total cost is greater than $1 billion. The law also increases the cap on the community service fee from $2 million for urban projects and $500,000 for rural projects to $2.5 million for both urban and rural projects. Applies to projects approved by the state Economic Development Commission on or after October 6, 2017.

B. Enterprise Zone Wage Requirements (2017 Or Laws ch 610, HB 2066, Effective October 6, 2017).

Existing law applies a minimum “compensation” standard for employees added at a facility for which enterprise zone property tax exemption is sought. This new law lowers the minimum “compensation” (including benefits) required in certain rural counties to 130 percent of the county annual average wage. The same law imposes a new “wage for wage” requirement that the minimum “wage” (excluding benefits) paid to the new employees must equal or exceed the county annual average wage.

Note that the same changes apply to the rarely used discretionary income tax credit for rural facilities. Applies to agreements/exemptions on or after October 6, 2017.


This law makes technical and administrative changes to Oregon’s Enterprise Zone Act, primarily for administration of the regular three- to five-year exemption program.

D. No Tax on Publicly Owned Property Leased to Taxable Lessee and Disqualified from Special Assessment (2017 Or Laws ch 275, HB 3171, Effective October 6, 2017).

This new law resolves the way so-called “roll-back penalties” apply when land is disqualified from farm use or other special assessment, but the land is owned by the public. The law provides that no roll-back penalty will apply in that circumstance. Applies to property tax years beginning on or after July 1, 2017.
E. **Forestland: Disqualification from Special Assessment Is Deemed to Occur the Previous January 1; Assessor Must Notify before August 15 (2017 Or Laws ch 25, HB 2281, Effective October 6, 2017).**

This law clarifies that disqualification is deemed to occur as of January 1 if the land is discovered to have become ineligible for special assessment anytime during the year. As under current law, however, an override applies: The assessor must mail notice of disqualification before August 15 in order for disqualification to occur. Applies to disqualifications on or after January 1, 2018.

F. **Opt-in Affordable Housing Exemption (2017 Or Laws ch 624, HB 2377, Effective October 6, 2017).**

This new law adds a seventh(!) form of low-income multi-unit housing exemption that a city or a county can adopt by ordinance. This program generally provides an exemption for a period determined by ordinance, with a longer exemption period if the owner rents more units to households at or below 120 percent of the area median income. The new law is repealed January 2, 2027.

G. **Extension of Alternative Energy Systems Property Tax Exemption (2017 Or Laws ch 542, HB 2760, Effective October 6, 2017).**

ORS 307.175 provides a property tax exemption for certain alternative energy property, including solar, wind, methane and other facilities. The new law extends the sunset so that the property tax exemption will not be allowed for tax years beginning on or after July 1, 2023.

H. **Exemption for Property of LLC Owned by Nonprofits or Public Bodies (2017 Or Laws ch 445, SB 149, Effective October 6, 2017).**

ORS 307.022, enacted in 2005 in response to a Magistrate Division opinion, allows a limited liability company (“LLC”) to claim property tax exemption despite the fact that most exemptions are available only to nonprofit corporations, public bodies or other specified entities. Existing law requires the LLC to be wholly owned by one or more nonprofit corporations. The new law broadens the relief so that an LLC owned in part by at least one nonprofit corporation and at least one public body also is eligible, but the exemption applies only to the least extent that exemption would apply if the property were owned only by the nonprofit LLC members directly. Applies to tax years beginning on or after July 1, 2017.

This new law authorizes a city or county to adopt an ordinance or resolution to provide for a full or partial property tax exemption for eligible property that will undergo structural seismic retrofitting. “Eligible property” means improvements built before January 1, 1993, that constitute a commercial, industrial or multifamily building that is not centrally assessed or state-assessed industrial property. The exemption period may be a maximum of 15 years.

The new law provides numerous safeguards and limitations. Among other things, notwithstanding the exemption period, the exemption ends when the tax benefit of the exemption equals the eligible costs for structural seismic retrofitting, upon the discovery by the city or county that the qualified property does not comply the requirements of the law, or upon the discovery of misleading or false documentation related to the tax exemption. The law includes a clawback provision if the property is disqualified because it does not comply with the law or misleading or false documentation was filed. The city or county may impose further limitations and conditions by ordinance. The law’s sunset provision requires applications for exemption to be submitted before January 2, 2028.

VIII. Estate Tax


For estate tax returns due on or after January 1, 2018, this law eliminates the possibility that two 5 percent penalties (failure to timely pay and initial failure to timely file) would apply. If the failure to file continues more than three months after the due date, the 20 percent penalty in ORS 118.260(2) is added to one of the 5 percent penalties, but not both, so that the cumulative penalty will not exceed 25 percent.

IX. Excise Taxes

A. New 0.1% Gross Wages Tax (2017 Or Laws ch 750, HB 2017, Effective October 6, 2017).

This omnibus transportation funding bill includes a new 0.1% tax on the wages of Oregon residents and the wages of nonresidents for services performed in Oregon. The entire tax amount will be withheld from employee wages, and there is no provision to collect from employees, except that a resident employee whose employer is not doing business in Oregon will be required to report and pay as determined by administrative rule.

In contrast to regular wage withholding, the new law includes no cross-reference between the new wage tax (starting at section 122a of the bill) and ORS 316.187; therefore, the new tax functions as an independent excise tax and not as a credit against the employee’s personal income tax liability. There is no employer-paid component to this tax.

The new law imposes a penalty of $250 per employee (up to $25,000) if an employer knowingly fails to deduct and withhold the tax.
Chapter 1—Federal and State Tax Update

The new wage tax applies to tax periods beginning on or after July 1, 2018.

B. New 0.1% Tax on “Periodic Payments” (2017 Or Laws ch 750, HB 2017, Effective October 6, 2017).

HB 2017 also requires every payer of a periodic payment from an employer deferred compensation plan (such as a qualified retirement plan), an individual retirement plan (such as an individual retirement account or individual retirement annuity) or a commercial annuity (including life insurance contracts) to withhold and remit 0.1% (one-tenth of one percent) of each gross periodic payment. (For example, if the gross payment is $2,000, the tax withheld will be $2.)

The new withholding tax will be mandatory. Unlike the regular income tax withholding rules that permit the recipient to elect to have no income taxes withheld from such periodic payments, the recipient will not be allowed to elect to have no withholding apply to this new payroll tax.

The entire tax amount will be withheld from the periodic payment. There is no separate, additional tax on the payer. The new law makes a payer directly liable for any tax that the payer fails to withhold and remit. The bill does not include any mechanism for the state to recover tax from the recipient if the payer fails to withhold.

The Department of Revenue is seeking advice regarding whether the new tax is an “income tax” within the meaning of 4 USC § 114, which prohibits a state from imposing its income tax on the “retirement income” of a nonresident. (See also ORS 316.127(9).) In contrast to the new wage tax, the tax on periodic payments incorporates ORS 316.189, which incorporates the general wage withholding provisions, including the provision that treats withheld amounts as in payment of personal income tax. In the meantime, the first draft of administrative rules released by the Department would not apply the new periodic payments tax to payments to nonresidents, to the extent the payments constitute “retirement income.”

The new law does not explicitly impose any new penalties on a payer of a periodic payment.

Payers will need to start withholding on periodic payments made on or after July 1, 2018.


Oregon has a long history of opposition to a general sales tax but in 2015 created a 17 percent sales tax on the sale of marijuana and cannabis products as part of the legalization of such products.

Although it would be premature to call the marijuana tax a “gateway” to a broader sales tax, HB 2017 imposes a tax on Oregon vehicle dealers equal to 0.5% of the retail sales price of a taxable motor vehicle (generally, automobiles, pickup trucks, campers, electric assisted bicycles, and motorcycles). Although labeled a “privilege tax,” the tax is measured by the retail sales price and the seller can collect it from the purchaser. Accordingly, it has substantive features of a sales tax. Further, the law imposes a corresponding 0.5% use tax on the purchaser for the
storage, use, or other consumption in Oregon, with a reduction for any privilege, excise, sales or use tax imposed by any other jurisdiction.

In addition, the law imposes a $15 excise tax on the sale of a new bicycle in Oregon if the sale price is $200 or more and the bicycle has wheels of at least 26 inches in diameter. The tax is imposed on the purchaser, but a seller engaged in the business of selling bicycles is required to collect and remit the tax.

The vehicle and bicycle taxes apply to a sale or use on or after January 1, 2018.
Federal Tax Update

Presented by
Kevin Pearson

Broadbrush Taxation: Tax Law for the Non-Tax Attorney
October 2017

Budget Act – TEFRA Repeal
BACKGROUND

• Completely repeals and replaces TEFRA
• Unusual legislative background
  – Bipartisan Budget Act passed on Nov 2, 2015
  – Bill labeled with $9B revenue generation
  – Very unexpected
• Great deal of uncertainty
  – “Under rules prescribed by Secretary”
  – No definite date for final regulations
• Effective for tax years beginning in 2018
• May elect early application

BASIC FRAMEWORK

• All audits conducted at partnership level
• Any “imputed underpayment” paid by partnership
  – Paid in year of adjustment
  – Calculated at highest rate in effect for adjustment year
  – Partnership may demonstrate lower adjustment
• “Partnership Representative”
  – Replaces concept of TMP
  – Not required to be a partner
  – Must have “substantial US presence”
ELECTIONS

• Election out altogether
  – Must have 100 or fewer K-1 partners
  – Each partner must be individual, C corp or S corp
• Election to have partners pay imputed underpayment
  – Generally does not change calculation
  – Only changes who pays
  – Must be made within 45 days of FPAA
• Election to send revised K-1s
  – Treasury to issue regulations
  – May become default

TEFRA REPEAL – ONGOING ISSUES

• Administrative Adjustment Request
  – Still possible under new rules
  – Uncertain how and when to be used
• Proposed regulations
• Uncertainty and dissatisfaction prevails
• Addressing new provisions in agreements
• Ancillary Impacts Unknown (e.g., treaties)
**SAMPLE LANGUAGE**

The Members acknowledge that Subchapters C and D of Chapter 63 of the Code have been repealed, and that Chapter 63 of the Code has been amended, by Section 1101 of the Budget Act, to be effective with respect to taxable years beginning after December 31, 2017. The Members agree to work together, reasonably and in good faith, to take such action (including, without limitation, amending this Agreement or entering into a separate agreement) as reasonably necessary to preserve and retain after the effective date of Section 1101 of the Budget Act (and Treasury Regulations, notices, revenue procedures, revenue rulings or other administrative guidance, interpreting or applying the Section 1101 of the Budget Act), to the extent possible, the substantive arrangement and relative and analogous rights, duties, responsibilities and obligations of the Members reflected in this Article with respect to tax audits and other administrative procedures addressed by Section 1101 of the Budget Act (including, without limitation, by designating the Managing Member as the “partnership representative” as that term is used in Section 6231(a) of the Code as amended by the Budget Act).

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**Federal Income Tax Reform**
BACKGROUND

• Great deal of speculation, not much specific
  – Generally focused on tax simplification
  – Generally includes reduction of tax rates
• Various proposals discussed
  – “Border adjustment”
  – Other more exotic proposals
• Fundamental problem – paygo
  – Must pay for tax cuts with revenue generators
  – Sunsetting tax cuts and eliminating benefits

“UNIFIED FRAMEWORK FOR FIXING OUR BROKEN TAX CODE”

• “UFFOBTC” – not very creative
• Released Oct. 29 by “big six”
  – House Speaker Paul Ryan
  – Senate Majority Leader Mitch McConnell
  – House Ways & Means Char Orrin Hatch
  – Treasury Secretary Steve Mnuchin
  – Director of Nat. Econ. Council Gary Cohn
• Very general framework
• No specific statutory language proposed
BUSINESS TAX RATES

• Tax rate for C corporations
  – Eliminates current brackets
  – Flat 20% tax rate
  – Eliminates corporate AMT
  – “May consider elimination of double taxation”
• Tax rate for small businesses
  – 25% for partnership, S corporation, proprietorship
  – Would not apply to “service partnerships”

OTHER BUSINESS TAX REFORM

• Immediate “expensing” of capital investments
• Limit on C corporation interest deduction
• Section 199 deduction eliminated
• All tax credits eliminated, except:
  – Research & development credit
  – Low income housing credit
• “Special tax regimes” for specific industries to be eliminated
INTERNATIONAL BUSINESS TAX REFORM

• Switch from worldwide system to territorial system
• Immediate deemed repatriation of offshore assets
  – Tax spread over time
  – May be subject to special rates
• May ease anti-inversion rules

INDIVIDUAL TAX REFORM

• Increase standard deduction to
  – $12,000 single filers
  – $24,000 married filing jointly
• Reduce tax brackets from current 7 to 3:
  – 12%
  – 25%
  – 35%
  – “Additional top rate may apply to highest-income taxpayers”
• Individual AMT eliminated
INDIVIDUAL TAX REFORM (CONT.)

• Enhanced child tax credit
• Most itemized deductions eliminated, except
  – Home mortgage interest
  – Charitable contributions
• Some incentives for employment may be retained
• Estate and gift tax and generation-skipping tax eliminated
Oregon Tax Update

Presented by
Robert Manicke
Broadbrush Taxation: Tax Law for the Non-Tax Attorney
October 2017

New Income Tax Laws and Cases: 2016 and 2017
See Detailed Outline Items Marked:
### NEW INCOME TAX LAWS

- New hotline for corporations
- Tax practitioner assistance line
- Lottery withholding
- Earned income credit: increased amount, increased publicity by employers
- Market-based sourcing of income from services and intangibles
- Credits sunset on a six-year cycle
- New “Working Family Dependent Care” credit

### OTHER NEW TAX LAWS

- Property tax exemption and incentive changes
- Tweaks to “special assessment” and “rollback penalty” laws
- New 1% gross wage tax
- New 1% tax on retirement distributions
- 0.5% tax on new vehicles
- $15 tax on new bicycles
NEW INCOME TAX CASES

• “Economic nexus” suffices; no physical presence required for out-of-state business selling into OR
• Warranty repair by retailer triggers tax on wholesaler
• Department of Revenue must read taxpayer’s appeal materials before sending a deficiency notice

Recent and Future Tax Proposals
GROSS RECEIPTS TAX PROPOSALS

- Measure 97
  - 2.5% on gross receipts > $25 million
  - 50 C corporations would have paid $1.5 billion/year
- Commercial Activity Tax (Sample from HB 2830)
  - Up to 0.75% on gross receipts > $3 million
  - Applies to all businesses
- Measure 97 “Lite” (2017 IP 27)
  - 0.95% on gross receipts > $5 million
- “Watch this Space” (e.g. Portland surtax on large retailers)

PROPERTY TAX PROPOSALS

- Current System: Measure 50
  - Artificially low assessed value, frozen tax rates:
    - Reduced tax for owners and tenants
    - Restricted revenue for local governments
  - Disparities among similar properties
- Proposals:
  - Transition back to FMV assessment with homeowner relief
  - Eliminate some business exemptions
  - Eliminate 2% and 3% discounts for early payment
## Property Tax Proposals (Cont’d)

- **Current System: Measure 5**
  - Restricts aggregate tax rates → “Compression”
- **Proposals:**
  - Raise or eliminate aggregate rate caps
  - Replace aggregate rate caps with a limitation tied to growth
# Chapter 2

## Tax Considerations for Choice of Business Entity

**Berit Everhart**  
Arnold Gallagher PC  
Eugene, Oregon

## Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>I.</td>
<td>Introduction</td>
<td>2–1</td>
</tr>
<tr>
<td>II.</td>
<td>Overview of General Forms of Business Entities</td>
<td>2–1</td>
</tr>
<tr>
<td>A.</td>
<td>Sole Proprietorship</td>
<td>2–1</td>
</tr>
<tr>
<td>B.</td>
<td>Partnerships</td>
<td>2–1</td>
</tr>
<tr>
<td>C.</td>
<td>Corporations</td>
<td>2–2</td>
</tr>
<tr>
<td>D.</td>
<td>Limited Liability Company</td>
<td>2–3</td>
</tr>
<tr>
<td>III.</td>
<td>Comparison of Forms of Business Entities</td>
<td>2–4</td>
</tr>
<tr>
<td>A.</td>
<td>Legal Documentation</td>
<td>2–4</td>
</tr>
<tr>
<td>B.</td>
<td>Management and Control</td>
<td>2–7</td>
</tr>
<tr>
<td>C.</td>
<td>Liability of Owners</td>
<td>2–8</td>
</tr>
<tr>
<td>D.</td>
<td>Taxation</td>
<td>2–11</td>
</tr>
<tr>
<td>E.</td>
<td>Entity Taxation</td>
<td>2–12</td>
</tr>
<tr>
<td>IV.</td>
<td>General Summary</td>
<td>2–28</td>
</tr>
<tr>
<td>A.</td>
<td>General Guidelines in Selecting Form of Entity</td>
<td>2–28</td>
</tr>
<tr>
<td>Choices of Entities</td>
<td></td>
<td>2–33</td>
</tr>
<tr>
<td>Presentation Slides</td>
<td></td>
<td>2–35</td>
</tr>
</tbody>
</table>
I. **INTRODUCTION.**

These materials provide a general overview of the legal issues and considerations involved in selecting, forming, operating and maintaining the various types of business entities. The materials review the general characteristics of different business entities, compare the basic functions and characteristics of the different entities to provide a general understanding of each entity’s structure and purpose, and analyze common tax considerations that typically weigh into the entity selection process.

II. **OVERVIEW OF GENERAL FORMS OF BUSINESS ENTITIES.**

A. **Sole Proprietorship.** The sole proprietorship is a business owned and operated by a single person who individually owns the business assets. The business may or may not have employees. The owner or proprietor is entitled to the profits of the business, must bear its losses and is personally liable on an unlimited basis for its debts and obligations.

B. **Partnerships.**

1. **General Partnerships.** Oregon general partnerships are governed by the Oregon Revised Partnership Act (the “Act”), which is ORS chapter 68. A general partnership is defined as (i) an association (ii) of two or more persons (iii) to carry on as co-owners (iv) a business (v) for profit. A partnership may be created by a written (preferred) or oral (not preferred) agreement, or may be implied by the conduct or acts of the parties (really not preferred). Provisions of the partnership not covered by agreement of the parties are governed by the Act. Partners generally share in management of the partnership and in its profits and losses. The partners are “jointly” liable for all partnership debts and obligations and are “jointly and severally” liable to third parties for acts or omissions of partners occurring in the ordinary course of partnership business.

   Under the “entity” and “aggregate” theories, a general partnership is either a separate legal entity or simply the aggregate of the individual partners. Generally, a partnership is treated as a separate entity which may own assets, operate a business and sue or be sued. However, for income tax purposes, a partnership is not a taxpayer. Instead, it is a funnel through which its income and deductions are channeled to the partners who individually recognize the partnership’s income, gain, losses, deductions and credits. The partnership simply files an informational income tax return with the IRS.

   Subject to certain exceptions (like disguised sales or mixing bowl transactions, discussed below), there is generally no gain recognized by the partnership or the partners on appreciated assets distributed from the partnership to partners.

2. **Limited Partnerships.** A limited partnership is governed by ORS chapter 70. A limited partnership is (i) a partnership (ii) of two or more persons (iii) having one or more general partners and (iv) one or more limited partners. As in a general partnership, the general partners in a limited partnership share in the operation and management of the partnership and are jointly liable for all partnership debts and obligations and jointly and severally liable to third
parties for acts and omissions of the general partners occurring in the ordinary course of the partnership’s business. A limited partner is generally not liable for the obligations of the limited partnership beyond the limited partners’ agreed upon partnership contribution. To retain limited liability, the limited partner must not take part in the control of the partnership business nor permit his or her name to be used in the partnership’s name unless the creditors have actual knowledge that he or she is a limited partner.

For income tax purposes, a limited partnership is taxed in generally the same manner as a general partnership.

3. **Limited Liability Partnerships.** A limited liability partnership (LLP) is a partnership for which the liability of partners is limited in certain aspects. LLPs are governed by the law applicable to general partnerships except to the extent modified by the LLP statutory provisions.

General partnerships that render professional services (e.g., medical services, accounting services, legal services, dental services) and their affiliates may register with the Oregon Secretary of State as LLPs. For income tax purposes, generally speaking, an LLP is taxed in the same manner as a general partnership.

**C. Corporations.**

1. **C Corporations.** A corporation is a separate legal entity created by law. ORS chapter 60, the Oregon Business Corporation Act (the “Act”), and the corporation’s articles of incorporation written in conformance with the Act and filed with the state, give the corporation its powers and rights. Because it is a separate entity, the corporation can acquire, hold and convey property. Likewise, a corporation can sue or be sued. Also, unlike a partnership, a C corporation is a separate taxable entity. The corporation computes its profits and losses and pays taxes. Thus, shareholders (the owners) of a C corporation are not taxed on corporate profits and cannot deduct corporate losses on their individual income tax returns. Any corporate profits distributed to the shareholders as dividends are recognized as taxable income by the shareholders and are not deductible to the corporation. However, unlike partnership-taxed entities, appreciated assets distributed from a corporation to shareholders generate a corporate level income tax.

A corporation is owned by one or more shareholders or stockholders. For the most part, the rights of the shareholders to manage the corporation are limited to the election of the board of directors. The board of directors establishes policies, determines the amount and timing of distributions (that is, dividends) to shareholders and appoints the corporate officers. The corporate officers are responsible for the day-to-day operation of the corporate business.

A shareholder has limited liability. Unless a shareholder agrees with creditors that the shareholder will be liable for corporate obligations, the shareholder is generally not liable for the corporation's debts and obligations.
2. **S Corporations.** An S corporation is a creation of federal and state income tax laws and, except for taxation, is similar to a C corporation. An S corporation is generally not treated as a separate taxable entity, but is a conduit which merely files an informational income tax return with the IRS. For income tax purposes, the shareholders are much like partners who individually recognize the corporation’s income, gains, losses, deductions and credits. However, there are limitations to the number (i.e., 100) and type (i.e., generally, individuals who are U.S. citizens or residents and certain trusts) of shareholders who can own stock in an S corporation. Further, an S corporation cannot have more than one class of stock, which means that profits/losses and cash distributions must be allocated strictly based on the number of shares owned.

3. **Professional Corporations.** The professional corporation itself, like any other corporation, is a separate legal entity. The Oregon Professional Corporation Act, ORS chapter 58, governs the formation and operation of professional corporations. One of the primary distinctions between a non-professional corporation and a professional corporation lies in the limited liability feature. Under Oregon law, a professional who incorporates continues to be liable for his or her own negligence and wrongful acts and for the negligence and wrongful acts of other shareholders in rendering professional services, but the professional shareholder is not personally liable for other tort claims or contract actions. Thus, limited liability is an advantage of the professional corporation, even though the limited liability has some restrictions.

A professional corporation may be either a C corporation or an S corporation. Historically, however, S corporations have not been used in the professional corporation situation. This is probably due to the fact that S corporations were subject to restrictive retirement plan contribution limitations and that various tax benefits available in a C corporation context that were not available in the S corporation context. Due to changes in the tax laws to eliminate, or reduce to a great degree, these discrepancies, the use of the S corporation in the professional corporation setting is becoming more prevalent.

**D. Limited Liability Company.** A limited liability company ("LLC") is a cross between a partnership and a corporation. If the LLC has more than one owner (called a "member"), then the entity and its members are taxed as if the entity were a partnership, unless an election is made for the LLC to be taxed as a corporation. If the LLC has only one member, then the LLC is taxed as if the entity were a sole proprietorship, unless an election is made for the LLC to be taxed as a corporation.

The members may actively participate in the management of the business while retaining limited liability for its obligations. If the members choose not to manage the company’s business, they can elect “managers.” Like a corporation’s board of directors or officers, managers may be members or nonmembers and will direct and control company operations.
III. **COMPARISON OF FORMS OF BUSINESS ENTITIES.**

A. **Legal Documentation.**

1. **Sole Proprietorship.** A sole proprietorship requires no legal documentation for formation and is required to prepare and file relatively few reports. Federal and state tax returns and reports regarding employees are the main reporting requirements for a sole proprietorship. Since the assets of the business are owned by the sole proprietor, no federal or state tax return is filed for the business. Profits and losses are reported Form 1040, Schedule C of the owner’s return. In addition, if the sole proprietorship is operated under an assumed business name, that name must be registered with the Secretary of State and a report filed every other year to assure continuance of the name's registration.

2. **General Partnership.** General partnerships are required to file the same reports that sole proprietorships must file relating to their employees. In addition, the partnership must file an informational income tax return, which is in addition to the individual tax returns filed by the partners. Also, the partnership usually is operated under an assumed business name, and that name must be registered with the Secretary of State and renewed every other year.

   Although there are no statutory requirements regarding the maintenance of books and records for partnerships, the partnership agreement should require that the partnership maintain adequate records and books of account in accordance with generally accepted accounting principles. Additionally, it is common for the partnership agreement to require that annual financial statements of the partnership be prepared, including a balance sheet, a profit and loss statement, and such supporting statements as the partners from time to time deem relevant. If any special allocations will be made, to be respected, the partnership will need to maintain separate capital accounts for each partner in accordance with Treasury Regulation § 1.704-1 and comply with the “general economic effect” rules.

   If any of the general partners are not actively engaged in the management or operation of the partnership, there may be Securities Act filing obligations.

3. **Limited Partnership.** A limited partnership requires one additional filing from those required of a general partnership. A certificate of limited partnership must be filed with the Secretary of State. The certificate includes, among other things, the name of the limited partnership, so that no assumed business name filing is necessary.

   As with the general partnership, a limited partnership may have Securities Act filing obligations. Also, though there is no statutory requirement that the partnership maintain books and records, the limited partnership agreement will contain provisions similar to those discussed above in connection with general partnerships concerning the maintenance of records.

4. **Limited Liability Partnership.** As mentioned, registration under the LLP statute is limited to professional partnerships and their affiliates. The word “professional” includes accountants, attorneys, chiropractors, dentists, landscape architects, naturopaths, nurse practitioners, psychologists, physicians, podiatrists, radiologic technologists and real estate
appraisers. Any eligible general partnership may register as a limited liability partnership. A limited partnership may not register as an LLP.

A partnership may become a limited liability partnership by delivering an application for registration to the office of the Secretary of State for filing on appropriate forms. The LLP registration is perpetual, subject only to cancellation or administrative revocation. An LLP is required under Oregon law to file an annual report with the Oregon Secretary of State. The annual report must be filed each year not later than the anniversary date that the LLP registration was effective. The Secretary of State may commence a proceeding to administratively revoke the registration of an LLP if the LLP does not deliver its annual report or pay the correct fees when due.

5. **Corporation.** Like sole proprietorships and partnerships, a corporation must maintain reports regarding its employees. In addition, the corporation must make numerous other filings. First, a corporation must file its articles of incorporation and an annual report with the Secretary of State. At the start-up of the corporation, the incorporator or the board of directors must also adopt corporate bylaws to establish the structure of management of the business. Moreover, as mentioned previously, a corporation is required to file its own federal and state income tax returns. In addition, a qualified S corporation must elect S corporation status by filing its election with the appropriate IRS center.

Generally speaking, a corporation must make certain filings and maintain the following books and records:

a. A corporation must file its articles of incorporation and an annual report with the Secretary of State, as well as any amendments to the articles of incorporation.

b. At the start-up of a corporation, the incorporator or the board of directors must adopt corporation bylaws to establish the structured of management of the business.

c. A corporation is required to file its own federal and state income tax returns, although an S corporation files an informational income tax return like a partnership. In addition, a qualified S corporation must elect S corporation status by filing its election with the appropriate IRS center in a timely manner. An S corporation is formed, in most instances, in the same manner as a C corporation, with the exception of the S election.

d. It is necessary for a corporation to maintain corporation and accounting records for the benefit of shareholders and directors. Lending institutions and others who deal with the corporation may require that the corporation certify minutes and resolutions to assure that management has duly delegated the authority necessary to make a particular transaction.

e. Public corporations, or corporations with stocks that otherwise meet the requirement for filing under the state or federal securities laws, must submit registrations and an annual report, as must their officers, directors and, in some instances, shareholders.
f. Under ORS 60.771, each corporation is required to maintain the following records in written form or in another form capable of conversion into a written form without a reasonable time:

i. Minutes of all meetings of shareholders and board of directors, a record of all actions taken by the shareholders or board of directors without a meeting and a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the corporation.

ii. Appropriate accounting records. These records help protect against the piercing of the corporate veil.

iii. A record of shareholders in a form that permits preparation of a list and the names and addresses of all shareholders in alphabetical order by class of shares, showing the number and class of shares held by each.

iv. A copy of the following records at the corporation’s principal office or registered office:

(A) Articles of restated articles of incorporation and all amendments thereto;

(B) Bylaws or restated bylaws and all amendments thereto;

(C) Resolutions adopted by the corporation’s board of directors creating one or more classes or series of shares and fixing their relative rights, preferences and limitations, if shares issued pursuant to those resolutions are outstanding;

(D) The minutes of all shareholder meetings and records of all action taken by the shareholders without a meeting for the past three years;

(E) All written communications to shareholders generally within the past three years;

(F) A list of the names and business addresses of current directors and officers; and

(G) The most recent annual report.

6. Limited Liability Company. Like all other business entities, limited liability companies must maintain reports regarding their employees. In addition, the LLC must file articles of organization and an annual report with the Secretary of State. At the start-up of the limited liability company, the organizer, manager or member(s) must also adopt an operating agreement to provide for the regulation and management of the affairs of the limited liability company. The company must also file an informational federal and state income tax return.
Under ORS 63.771, an LLC is required to keep the following records at its registered office or another office designated in the operating agreement:

a. A list of the name and last-known business, residence or mailing address of each member and manager;

b. A copy of the articles of organization and all amendments thereto, together with any executed copies of any powers of attorney pursuant to which any amendment has been executed;

c. Copies of the LLC’s federal, state and local income tax returns and reports, if any, for the three most recent years;

d. Copies of any currently effective written operating agreements and all amendments thereto;

e. Copies of any financial statements of the LLC for the three most recent years;

f. Minutes of any meeting of members or managers;

g. Unless contained in a written operating agreement or other writing, a statement prepared and certified as accurate by a manager or member of the LLC describing the amount of cash and including a description and statement of the agreed value of other property or services contributed by each member in which each member has agreed to contribute in the future, the times at which or events on the occurrence of which any additional contributions agreed to be made by each member are to be made and, if agreed upon the time at which or the events on the occurrence of which the LLC is dissolved and its affairs wound up; and

h. Any written consent resolutions of the members or managers.

In addition, the operating agreement will require that the company keep adequate records and books of account and maintain them in accordance with generally accepted or sound accounting principles. These records commonly consist of annual financial statements, including a balance sheet, a profit and loss statement, and such supporting statements as the members deem relevant. Maintenance of records is necessary to help ensure the limited liability feature of the LLC.

B. **Management and Control.**

1. **Sole Proprietorship.** Because there is only one owner in a sole proprietorship, the owner has absolute control and management over the business.

2. **General Partnership.** Each partner is entitled to share equally in the management and business decisions of a partnership regardless of the size of the partner's specific interest. Further, Oregon law gives equal voting power to each of the partners in order to resolve disputes. So in essence, control and management is shared equally among the
partners. However, the partners may agree among themselves to alter the statutory provisions regarding management. For instance, the partners may select a managing partner or committee, or may allocate voting power based on percentage of ownership. The partnership agreement is controlling. These same rules apply to LLPs.

3. **Limited Partnership.** General partners in a limited partnership have control of the partnership, and essentially make all of the partnership's business decisions. A limited partner is restricted to inspecting partnership records and obtaining reasonable information about the partnership unless the partnership agreement provides otherwise. A limited partner who participates in the partnership may be deemed a general partner and lose the protection of limited liability.

4. **Corporation.** In a corporation, control and management are actually separate functions. Day-to-day business decisions (management) of the corporation are made by the officers. The officers are appointed by and are subject to the direction of the board of directors. The board of directors oversees the management of the corporation and establishes corporate policies. The shareholders elect the board of directors, with each shareholder having a vote equal to his or her interest in the corporation; therefore, the shareholders have actual "control" of the corporation.

In many small, closely-held corporations, the separation of management and control is simply a matter of form: the same person or group of people serve as shareholders, directors and officers of the corporation.

5. **Limited Liability Company.** The control and management of a limited liability company rests with its members unless the members elect to have the business managed by a manager or managers. Such election, if any, must be set forth in the articles of organization and should be reflected in the operating agreement.

### C. Liability of Owners.

1. **Sole Proprietor.** The sole proprietor is personally liable for all obligations arising out of the business, and thus places his or her personal assets at the risk of the business.

2. **General Partner.** Like a sole proprietor, a general partner in either a general or limited partnership is personally liable for the obligations arising out of the business if the partnership assets are not sufficient to satisfy the partnership liabilities. However, unlike a sole proprietor, a general partner is liable for the acts of his or her partner(s) as well as himself or herself, and therefore is financially exposed beyond his/her own acts. In addition, a partner has unlimited personal liability for the obligations of the partnership regardless of his/her percentage interest in the partnership. Therefore, a general partner is exposed to a greater liability than someone who invests in a business as either a limited partner, a member of a limited liability company, or as a corporate shareholder.

3. **Partner of an LLP.** Partners in an LLP who are professionals remain directly liable for their own negligent or wrongful acts or omissions or misconduct in the same
manner as shareholders of a professional corporation. This means that the partners are liable for their own professional negligence and are jointly and severally liable for professional services rendered on behalf of the professional practice, up to an annual maximum amount of $300,000.00 per licensed Oregon professional with an aggregate limited of $2,000,000.00 for the professional partnership. For LLPs with fewer than seven licensed Oregon partners, the maximum aggregate liability is $300,000.00 multiplied by the number of licensed Oregon professionals. For liabilities unrelated to the professional practice, such as offices leases and tort claims arising from circumstances unrelated to the professional practice, the partners have limited liability.

4. **Limited Partner.** A limited partner’s liability is limited to the amount that the limited partner originally contributed to the partnership, unless he or she has expressly agreed to be liable for an additional amount. A limited partner will lose the limited liability if he or she is either a general partner or takes part in the control of the business.

5. **Non-professional Corporate Shareholder.** With few exceptions, a shareholder’s liability is limited to the shareholder’s investment in the business. However, and as mentioned previously, particularly with regard to small, closely-held corporations, creditors usually require that the shareholders personally guarantee debts of the corporation. In that instance, the shareholder has given up the limitation on his or her liability.

6. **Professional Corporate Shareholder.** In the rendering of professional services on behalf of a professional corporation, a shareholder of the corporation is personally liable “as if the shareholder were rendering the service or services as an individual, only for negligent or wrongful acts or omissions or misconduct committed by the shareholder, or by a person under the direct supervision and control of the shareholder.” ORS 58.185(3). As with LLPs, liability for professional malpractice is limited to a yearly cap of $300,000.00 for joint and several liability for all claims made against a single shareholder of a professional corporation during a single year. Also, a $2,000,000.00 cap exists for joint and several liability for a single claim made against all shareholders during a calendar year. If the number of shareholders multiplied by $300,000.00 equals an amount that is less than $2,000,000.00, the total joint and several liability for a single claim made against all shareholders of the corporation cannot exceed an amount equal to $300,000.00 multiplied by the number of shareholders. These amounts are subject to adjustment for inflation every six years. The professional corporation shareholders have limited liability for corporate obligations, such as office leases and tort claims, arising from circumstances unrelated to the professional practice.

7. **Limited Liability Company Member.** Members of a limited liability company are not personally liable for the obligations of the business. As a result, like shareholders of a closely held corporation, members of a closely held LLC are usually required to personally guarantee the obligations of the company by creditors and thereby forfeit the limits on his or her liability. Managers of an LLC are not exposed to personal liability by reason of serving as a manager. It should be noted that for LLCs providing professional services, member liability for professional malpractice is the same as for partners in an LLP and shareholders of a professional corporation.
8. **Down-Stream Liability.** Down-stream liability refers to a creditor’s ability to attack a person’s ownership interest in a corporation, general partnership, limited partnership, limited liability partnership or limited liability company in satisfaction of the person’s personal debts/liabilities. For example, assume that Ann and Bill own a successful corporation. Ann owns 51% of the issued and outstanding stock and Bill owns 49%. Although Ann is a highly successful business woman, she has a gambling problem and has personally received loaned money from various creditors, including Charlie. Ann defaults on her loan to Charlie, who sues and in turn obtains a judgment against Ann. Charlie forecloses on the judgment and obtains ownership of Ann’s 51% of the shares. Charlie is not interested in running Ann’s business. He just wants his money and as the majority shareholder decides to sell the business to a competitor at a discount. A creditor’s ability to attack a person’s ownership interest depends on the type of entity and associated protections afforded by law or contract.

a. **Corporations.** Share ownership in corporations is not protected from creditors by statute (except professional corporations - generally, ownership in professional corporations is limited to licensed professionals.). However, shareholders can contractually agree among themselves to limit transfers of ownership (including transfers to creditors) through shareholder agreements generally known as “buy-sell” agreements. As a general matter, these agreements provide that if shares are transferred to a creditor, the remaining shareholders or the corporation has the right to purchase/redeem those shares for the lesser of the fair market value or debt owed. If Ann and Bill had such an agreement, then Bill may be in luck. If not, then Bill will be looking for a new job.

b. **Limited Liability Companies.** A judgment creditor may obtain a charging interest in the member’s ownership interest in the limited liability company. The creditor obtains the rights of an assignee to the extent charged. An assignee has the right to receive and retain, to the extent assigned (i.e., charged), the distributions, as and when made, and allocations of profits and losses to which the assignor would be entitled. However, an assignee does not have the right to participate in the management of the company unless and until accepted as a member. If not stated in the operating agreement, an assignee will become a member upon a majority vote of the members other than the assignor. If Ann and Bill had been owners in a limited liability company, Charlie would have obtained a charging interest in Ann’s ownership to the extent of the debt owed to Charlie. Once that debt was satisfied (e.g., through distributions), then Charlie’s interest would be discharged and ownership would revert to Ann. During the time Charlie had the charging interest, Ann would retain the right to vote and act on her ownership interest. Oftentimes, the operating agreement will provide that a transfer of a member’s interest to a creditor results in a withdrawal or disassociation of that member’s interest, which forces a buyout by the Company or remaining members of the withdrawing or disassociating member’s interest.

c. **General Partnerships and Limited Liability Partnerships.** A judgment creditor may obtain a charging interest in the transferable interest of a partner in the partnership. The court may order a foreclosure of the interest subject to the charging order at any time. The purchaser at the foreclosure sale has all of the rights of the transferee. At any time prior to the foreclosure sale, the charging order may be redeemed by the judgment debtor, by one or more of the other partners with property (other than partnership property) or by one or more of
the other partners using partnership property with the consent of all partners whose interests are not charged. If Ann and Bill were partners in a limited liability partnership, then Charlie would obtain a charging interest in Ann’s partnership interest. Either Ann or Bill could redeem that charging interest before foreclosure. If the interest were foreclosed, Charlie would step into the shoes of Ann entirely. At that point, Charlie could once again force a sale of the partnership. A limited liability partnership offers Ann and Bill more protection than a corporation (without a buy-sell agreement) but not as much protection as a limited liability company.

d. Limited Partnerships. A judgment creditor may obtain a charging interest against the partnership interest of the debtor partner. The judgment creditor has only the rights of an assignee to the extent the interest is charged. An assignee may become a limited partner, if and to the extent that the assignor gives the assignee that right in accordance with the partnership agreement or all other partners consent.

D. Taxation.

1. Types of Tax.

a. Income Tax. An entity may be subject to federal and state income tax, depending on the type of entity, the state of organization and where it does business. How and when the income is taxed depends on what type of entity is involved. The income taxation of various entity types is discussed more specifically below in each section designated to that entity.

b. Social Security and Unemployment Taxes.

i. Social Security Taxes. Social Security taxes are collected on employment wages and are paid by employers, employees and self-employed individuals. These taxes are paid pursuant to the Federal Insurance Contributions Act (FICA) or the Self-Employment Contributions Act (SECA). The payments made under FICA and SECA fall into two categories.

   (A) Old-Age, Survivor and Disability Insurance (OASDI) funds are used to pay retirement and disability benefits. The rate currently for OASDI is 6.2% for the employer and 6.2% for the employee (12.4% combined and for the self-employed). However, the employment wages subject to the OASDI portion of FICA and SECA obligations is limited to the taxable wage base defined in section 3121. The taxable wage base is an employee’s earnings, less certain very limited deductions, and is capped at $127,200 for 2017.

   (B) Hospital Insurance (HI) taxes are used to pay medical expenses for elderly and disabled individuals. The HI rate is 1.45% and not subject to any wage cap. Like its OASDI counterpart, the 1.45% HI tax is paid by both an employer and employee or both halves (totaling 2.9%) are paid by a self-employed individual. An additional 0.9% tax is added on earned income exceeding $200,000 for individuals and $250,000 for married couples filing jointly.
ii. **Unemployment Taxes.** Unemployment taxes are paid by employers pursuant to the Federal Unemployment Tax Act (FUTA). FUTA taxes are paid at the rate of 6.2% on the first $7,000 of wages paid to each employee, subject to a credit for state unemployment tax paid up to 5.4%.

### E. Entity Taxation.

Tax is often the tail that wags the dog when deciding what type of entity to employ or how to structure certain transactions. Each type of entity available for use has its own characteristics. Some are shared and some are unique. This section will discuss the basic elements of several common types of business entities from a taxation perspective.

1. **Sole Proprietorship.** A sole proprietorship is not a legal entity. It is a business conducted by an individual with no co-owners and as such is not distinguished or recognized as an entity separate from the individual.

   TAX CHARACTERISTICS:
   - All items of income and deductions are recognized directly by the proprietor on his or her personal tax return.
   - Subject to income tax and self-employment tax.
   - Tax-free creation.

2. **General Partnership.** A general partnership is an entity/aggregation of individuals who carry on a business for profit. A general partnership offers no liability protection and each partner is personally liable for the debts and obligations of the partnership.

   TAX CHARACTERISTICS:
   - Tax-free creation under section 721(a) for transfers of “property” to a partnership in exchange for partnership interest; but note exception in section 721(b) for transfer of property to “investment company” (which prevents taxpayers from diversifying their investment portfolios tax free); no control requirement for tax-free treatment under section 721(a).
   - “Property” is not defined in the tax code, but the courts have been guided by the interpretation of the term under section 351, the counterpart of section 721 in the corporate area, which provides that “property” includes cash, inventory, accounts receivable, patents, installment obligations and other intangibles such as goodwill and industrial know-how; does not include the performance of services for the partnership.
   - A partner’s basis in her partnership interest is referred to as the “outside basis.” A partnership’s basis in its assets is referred to as the “inside” basis. These terms are used
to distinguish between the partner’s and the partnership’s bases. On a contribution of property in exchange for a partnership interest, a partner’s outside basis under section 722 is equal to the sum of the money and the adjusted bases of property contributed to the partnership. Under section 723, the partnership’s inside basis is equal to the basis the contributing partner had in the property.

- Because a partnership is treated as an aggregate of its individual partners for purposes of taxing its income, the tax code adopts aggregate principles to determine the impact of partnership liabilities on the partners and their outside bases. Under section 752(a), an increase in a partner’s share of partnership liabilities is considered a contribution of money which increases the partner’s outside basis under section 722. A decrease in a partner’s share of partnership liabilities is considered under section 752(b) to be a distribution of money to the partner which decreases the partner’s outside basis (but not below zero). If a decrease in a partner’s share of partnership liabilities exceeds the partner’s outside basis, the partner must recognize the excess as capital gain from the sale or exchange of a partnership interest under sections 731(a)(1) and 741.

**Example:** X, Y and Z each contribute $50,000 cash to form the XYZ partnership and agree to share all partnership profits and losses equally. XYZ purchases a piece of investment real estate for $180,000, paying $60,000 cash and giving the seller a $120,000 purchase money note secured by the real estate. No partner is personally liable for the note. The purchase money obligation is a nonrecourse liability of the partnership which will be shared equally by the partners, because they have equal interests in partnership profits. X, Y and Z will be treated as if they contributed $40,000 each to XYZ under section 752(a) to reflect the increase in their share of partnership liabilities (from 0 to $40,000). As a result, each partner’s outside basis will be $90,000 under section 722.

- If property is contributed by a partner to a partnership and the property is subject to a liability, the partnership is considered to have assumed the liability to the extent it does not exceed the fair market value of the property at the time of contribution.

**Example:** Z contributes property with a $1,500 adjusted basis to a general partnership for a 25% interest in the partnership, which results in Z receiving an outside basis of $1,500. The property is subject to a $2,000 nonrecourse liability and has a fair market value of $5,000. The partnership is considered to have assumed the liability and Z’s individual liabilities are considered to have decreased by $2,000, which is a deemed cash distribution under section 752(b). There is no corresponding increase in Z’s share of partnership liabilities, which results in a net change in Z’s individual and partnership liabilities being a decrease of $2,000. In this case, Z’s outside basis will be reduced from $1,500 to zero under section 752(b) and Z will recognize $500 of capital gain ($2,000 liability relief - $1,500 basis).

- A partner’s outside basis is increased and decreased based on partnership activities. Under section 702, a partner is taxed directly on his distributive share of partnership income or loss. Section 705 adjusts the partner’s outside basis to reflect these results. In general, a partner must increase his outside basis by his distributive share of partnership
taxable income and tax-exempt income and decrease it (but not below zero) by partnership distributions, as provided in section 733, and his distributive share of partnership losses and expenditures.

**Example:** Partner X has a $1,000 outside basis in her partnership interest and her distributive share of partnership income for the year is $4,000. The partnership income passes through to X and is reported on her personal tax return. Under section 705, her outside basis will be increased to $5,000 ($1,000 plus $4,000). If the partnership distributed $3,000 of cash to X at the end of the year, her outside basis would be reduced to $2,000 by the distribution.

- There is no tax imposed on the partnership as an entity, so it is what is known as a pass-through entity for income tax purposes.
- The partnership is required file an IRS Form 1065, as are all types of partnerships, but isn’t itself liable for any income tax.
- The partners will report their appropriate portion of all partnership income and deduction items, which are provided to them on a Schedule K-1, on their individual returns.
- Profits and losses may be allocated among the partners in any way desired, as long as they have “substantial economic effect,” as defined in section 704(b).
- To have “economic effect,” an allocation must be consistent with the underlying economic arrangement of the partners. The treasury regulations use a three-part test to determine whether an allocation is consistent with the underlying economic arrangement of the partners. This basic test is backed up by other tests which, if satisfied, can validate an allocation.
- The “basic test” generally provides that an allocation will have economic effect if, throughout the full term of the partnership, the partnership agreement provides for proper maintenance of the partners’ capital accounts, that upon liquidation of the partnership liquidating distributions will be made in accordance with positive capital account balances of the partners and that a partner will be unconditionally obligated to restore any deficit capital account balance.
- Under the “alternate test” for economic effect, an allocation will be respected if capital accounts are appropriately maintained and liquidating distributions are made in accordance with positive capital account balances, provided that the allocation does not cause or increase a deficit in the partner’s capital account. The partnership agreement must contain a “qualified income offset,” which requires that if a partner has a deficit capital account balance as a result of certain events that partner will be allocated items of income or gain in an amount and manner sufficient to eliminate the deficit as quickly as possible.
- In general, the capital account of each partner is increased by (i) the amount of money contributed by the partner; (ii) the fair market value of property contributed by the partner.
(net of secured liabilities); and (iii) allocations to the partner of partnership income or gain (including tax-exempt income); and decreased by (i) the amount of money distributed to the partner; (ii) the fair market value of property distributed to the partner (net of secured liabilities); and (iii) allocations to the partner of partnership losses. Although these calculations are similar to the rules for determining and adjusting a partner’s outside basis, it should be noted that, with respect to capital account maintenance, contributions and distributions of property are accounted for at fair market value, rather than basis.

Example: A and B form a general partnership, with A contributing $30,000 cash and B contributing GreenAcre valued at $30,000 and with a $10,000 basis. Immediately after the formation of the partnership, A’s outside basis is $30,000 and her capital account is $30,000. B’s capital account is also $30,000, but his outside basis is $10,000.

• In addition to meeting the economic effect requirements, in order to be respected, an allocation must be “substantial,” which requires that there be a reasonable possibility that the allocation will affect substantially the dollar amounts to be received by the partners from the partnership, independent of tax consequences.

• Loss limited to outside basis under section 704(d); this basis includes partnership debt allocated to partner under section 752.

• Generally, the at-risk rules of section 465 and the passive activity rules of section 469 apply at the partner level.

• Under section 465, a partner’s share of partnership losses and deductions is limited to his amount “at risk.” The at-risk limitation is applied on a partner-by-partner basis. Under section 465, generally speaking, a partner is initially considered “at risk” to the extent of cash contributions to the partnership, the adjusted basis of property contributed to the partnership, and amounts borrowed for use in the activity for which the partner is personally liable or has pledged property as security to the extent of the property’s fair market value.

• Under section 469, a taxpayer’s passive activity loss for the year is disallowed. The purpose of section 469 is to prevent taxpayers from using losses from passive activities to offset salary and investment income. The limitation is applied on a partner-by-partner basis, not at the partnership level. The taxpayer’s “passive activity loss” is the amount by which her aggregate losses from all passive activities exceed her aggregate income from such activities.

• Self-employment tax applies to partners, subject to real estate rent and gain on sale exception.

• Pure profits interest issued to partner for services is not presently taxable, unless tradeable, tied to securities or stream of income or disposed of within 2 years; capital interest subject to taxation if issued for services; split of authority on tax impact on
partnership if capital interest is issued for services, which could result in gain recognition at partnership level (and flow-through to partners).

- A partner may acquire an interest in partnership capital or profits as compensation for services performed or to be performed. A partnership capital interest is one that entitles the partner to a share of the proceeds if the partnership’s assets are sold at fair market value and the proceeds are then distributed in a complete liquidation of the partnership. A partnership profits interest is a partnership interest that is not a capital interest. It could be an interest in future profits of the partnership, an interest in appreciation of the value of the partnership, or some other type of interest. The key distinguishing characteristic between a capital interest and a profits interest is whether the partner acquiring such interest would be entitled to a portion of the proceeds that would exist if the partnership liquidated the moment after the partner obtained the interest.

- Historically, a partner has not been taxed upon the receipt of a profits interest in a partnership, and the partnership has not been able to claim any deduction upon the grant of a profits interest. See Revenue Procedure 93-27; Revenue Procedure 2001-43. In Notice 2005-43, the IRS announced plans to propose regulations that add additional complexities and reporting requirements for the issuance of a profits interest in a partnership in exchange for services. To date, the regulations remain proposed and are not in effect.

- If the partner acquires an interest in partnership capital, the receipt of the capital interest is (i) taxable to the partner and (ii) deductible to the partnership. In other words, it is as if the partnership paid the partner an amount equal to the fair market value of the partnership interest, and the partner then contributed the amount back to the partnership in exchange for the partnership interest. Also, the partnership may be required to recognize gain inherent in a portion of its assets.

- Under the majority view, a partnership that transfers a capital interest for services is treated as transferring an undivided interest in each of its assets to the service partner in a taxable transaction and must recognize any gain or loss inherent in the transferred portion of each asset. The service partner is then treated as re-transferring the assets back to the partnership in a tax-free, section 721 transaction. A few commentators believe that the transfer of a capital interest for services should not be a taxable event to the partnership, noting by analogy that a corporation does not recognize gain when it issues stock as compensation for services.

**Example:** The AB general partnership has $150,000 of assets, consisting solely of land used in AB’s business (which has a $120,000 value and a $60,000 adjusted basis) and $30,000 of cash. In connection with the issuance of a one-third capital interest to C for services, AB will be entitled to a $50,000 deduction, assuming C’s services qualify as ordinary and necessary business expenses. AB will be viewed as having transferred 1/3 of its land ($40,000 fair market value, $20,000 adjusted basis) and cash ($10,000) to C for services and must recognize $20,000 of gain on the land. The 1/3 interest in the land and cash is then deemed to be transferred back to AB by C, who takes a $50,000 outside basis in her partnership interest and has a $50,000 capital
account. The land would now have an $80,000 inside basis ($40,000 basis in the 2/3 interest which remained in the partnership plus $40,000 in the 1/3 interest deemed transferred by C). The $20,000 gain and $50,000 deduction should be allocated to partners A and B, because the appreciation in the land took place before C became a partner and A and B paid for C’s services with their partnership capital. The remaining $40,000 of gain in the land should be taxable to A and B when the land is sold since that gain represents the appreciation prior to C’s entry into the partnership.

- Distributions of previously taxed earnings are not taxable. Gain is recognized on cash distributed in excess of basis under section 731. Generally, no gain or loss is recognized on property distribution (subject to disguised sale, mixing bowl or section 751 hot asset transactions). Debt-shift treated as cash distribution under section 752,

**Example:** A’s outside basis in the partnership is $10,000. If the partnership distributes $4,000 cash to A in a pro rata distribution to all partners, he will not recognize any gain or loss and his outside basis will be reduced to $6,000. If, instead, the partnership distributed $13,000 cash to A, he would recognize $3,000 of gain from the sale or exchange of his partnership interest and his outside basis would be reduced to zero. The results would be the same if, under section 752(b), the $13,000 distribution resulted from a $13,000 decrease and A’s share of partnership liabilities.

- Section 751 is designed to prevent shifts of ordinary income and capital gain among the partners through property distributions. Generally, it provides that if a partner receives in a distribution (1) “unrealized receivables” or “substantially appreciated inventory” in exchange for some or all of her interest in other partnership property (including money), or (2) other property (including money) of the partnership in exchange for some or all of her interest in the partnerships section 751 property (that is, unrealized receivables or substantially appreciated inventory), then the distribution is to be treated as a sale or exchange of the section 751 property between the partner and the partnership.

- “Mixing bowl transactions” are generally described as an income-shifting strategy that involves a partner first transferring appreciated property to a partnership and the partnership later either distributing the contributed property to another partner or distributing other property to the contributing partner. The objective is to shift or defer the recognition of the contributing partner’s precontribution gain by exploiting the non-recognition rules for contributions to a partnership (section 721) and distributions by a partnership (section 731). Under section 704(c)(1)(B), if property contributed by a partner is distributed to another partner within seven years of its contribution, the contributing partner must recognize the pre-contribution gain inherent in the property at the time of the contribution. Under section 737, a contributing partner must recognize gain if she contributes appreciated property to a partnership and within seven years of the contribution receives property other than money as a distribution from the partnership.

- Section 707(a)(2)(B) is the disguised sale rule that is designed to prevent sales of property between a partner and partnership from being structured as nontaxable
contributions and distributions under section 721 and 731. In general, if there are direct or indirect transfers of money and property between a partner and a partnership and the transfers, when viewed together, are properly characterized as a sale or exchange of property, then the transfers are to be treated as a sale or exchange between the partner and the partnership (or between two partners).

- Distributions need not be pro rata based on ownership percentages; priority distributions, preferred returns and other disproportionate distributions are allowed.

- Tax year is that of a majority of the partners (usually calendar year).

- Tax-free reorganization is not applicable (only corporations under section 368).

- With respect to the sale of a partnership interest by partner, generally capital gain treatment under section 741, except for “hot assets” under section 751 (A/R, inventory), and buyer acquires partnership interest with a cost basis; ordinary income on certain redemption payments under section 736 (depends on whether partnership is services partnership or asset partnership); possible termination of entity under section 708 if more than 50% interest sold or exchanged within 12-month period; need to address interim/part-year tax allocations; possible step-up of buyer inside basis on section 754 election.

- If section 751 applies to a sale of a partnership interest, it overrides the general rule in section 741 that the gain recognized from the sale or exchange of partnership interest is capital gain. Consequently, section 751 is the starting point in characterizing a partner’s gain or loss from the sale of a partnership interest.

- Section 751 provides that the consideration received by a selling partner in exchange for all or part of his interest in “unrealized receivables” or “inventory items,” shall be considered as an amount realized from the sale or exchange of property producing ordinary income rather than capital gain. In applying section 751, the critical questions are:
  - Does the partnership have unrealized receivables or inventory items; and
  - If so, what portion of the selling partner’s gain or loss is attributable to those assets?

- If a partner’s entire interest in the partnership is liquidated (that is, redeemed), section 736 is the starting point for determining the tax consequences of the transaction. Under section 736(b), payments for a partner’s “interest in partnership property” generally are treated as distributions by the partnership and taxed under the normal distribution rules applicable to nonliquidating distributions. In the case of a general partnership interest in a partnership in which capital is not a material income-producing factor, payments for the partner’s share of unrealized receivables and goodwill are generally not treated as payments for partnership property. Under section 736(a), payments not within section
736(b) (that is, payments for unrealized receivables and unstated goodwill for a general partnership interest in a services partnership) are to be considered either (i) a distributive share if the amount of the payment is dependent on partnership income or (ii) a guaranteed payment if the amount is determined without reference to partnership income. Under general tax principles, capital is not a material income-producing factor where substantially all of the income comes from the compensation for services. Accordingly, a partnership of doctors, lawyers, engineers, architects or accountants is not a business where capital as a material income-producing factor.

- With respect to a sale of assets by the partnership, generally asset-by-asset treatment.
  - Capital gain characterization possible on flow-through to partners.
  - On death of partner, step-up basis in partnership interest; estate may get benefit of step-basis in partnership assets with special election under section 754.

3. **Limited Partnership.**

A limited partnership is a partnership with at least one general partner and one limited partner. The limited partner is only liable for the debts or obligations of the partnership up to the amount it has invested in the partnership, while the general partner has unlimited liability for the debts and obligations of the partnership. To limit the liability exposure of the general partner, it is often formed as a limited liability company or a corporation.

**TAX CHARACTERISTICS:**

- Tax-free creation under section 721(a); however, note exception in section 721(b) for “investment company.” No control requirement.

- Property encumbered by debt that is contributed to LP may generate taxable income under section 752(b).

- Inside and outside basis calculations same as general partnership.

- The LP is a pass-through entity so items of income and loss flow through to the individual income tax returns of the partners. Files IRS Form 1065.

- The partners report their appropriate portion of all partnership income and deduction items, which are provided to them on a Schedule K-1, on their individual returns.

- Profits and losses may be allocated among the partners in any way desired, as long as they have “substantial economic effect,” as defined in section 704(b).

- The profits allocable to the general partner are subject to self-employment tax, while those allocable to the limited partner are not (unless paid as a guaranteed payment, which
is a wage equivalent and not truly a return of “profit” to the limited partner; but query whether limited partner should be receiving any such compensation).

- For partnership interest issued for services, for general partner, same as with general partnerships; limited partners should not be receiving compensation in LP in connection with the performance of services for the LP.

- Distributions of cash or property treated in the same manner as distributions in general partnership.

- Tax year is generally that of majority of partners (usually calendar year).

- Tax-free reorganization not available (only corporations under section 368).

- Loss for each partner limited to outside basis; this basis includes partnership debt allocated to partner, same as general partnership.

- Generally, at-risk rules and passive activity rules apply at partner level.

- Sale and redemption of partnership interest treated in same manner as general partnership.

- Sale of assets by partnership treated in same manner as general partnership.

- Death of partner treated in same manner as general partnership.

4. Limited Liability Company.

A limited liability company is essentially a hybrid entity that incorporates the flexibility of a partnership for tax purposes and the full liability protection of a corporation. Unlike a general or limited partnership, there is no partner (or “member” in the case of an LLC) that is subject to unlimited liability, but unlike a corporation taxed under subchapter C, there is no second layer of tax imposed on the entity (assuming it elects to be taxed as partnership).

- Generally taxed as a partnership if multiple members (tax-free creation usually available under partnership rules), unless an election is made to be taxed as a corporation (tax-free creation may be available under corporation rules).

- Taxed as a sole proprietorship if single member unless an election is made to be taxed as a corporation.

- There is no tax imposed on the LLC as an entity, provided it is taxed as a partnership, which means that the LLC will be a pass-through entity; the LLC will file a Form 1065, but is itself not liable for any income tax.
• Tax-free creation under section 721(a), subject to section 721(b) “investment company” exception.

• Inside and outside basis calculations same as general partnership.

• Property encumbered by debt that is contributed to the LLC may generate taxable income under section 752(b).

• The members will report their appropriate portion of all LLC income and deduction items, which are provided to them on a Schedule K-1, on their individual returns. Profits and losses may be allocated among the members in any way desired, as long as they have “substantial economic effect,” under section 704(b).

• For a membership interest issued as compensation for service, pure profits interest not presently taxable, unless tradeable, tied to securities or stream of income or disposed of within two years; capital interest subject to tax to recipient; split of authority on tax impact on LLC; same rules as general partnership.

• Usually, the self-employment tax applies to income allocated to a member like general partnership (note: real estate rent, gain on sale exception), except for purely passive members like limited partners.

• Distributions of cash and property treated in same manner as general partnership.

• The tax year of the LLC is generally that of a majority of the members (usually calendar year).

• A tax-free reorganization is not available.

• Losses allocated to members limited to outside basis. This basis includes LLC debt allocated to member (same as general partnership).

• Generally, at-risk rules and the passive activity rules apply at the member level.

• Sale and redemption of membership interest generally treated in same manner as general partnership.

• On sale of assets, generally asset-by-asset treatment; same as general partnership.

• On death of owner, same treatment as general partnership.

5. C-Corporation.

A C-corporation is a legal entity that is recognized as distinct from its owners. Its shareholders have no liability for the debts or obligations of the corporation and stand to lose
only the amount they have invested in the company. A corporation is governed by a shareholder elected board of directors, who in turn appoint officers to run day-to-day operations.

TAX CHARACTERISTICS:

- A C-corporation is its own taxpaying entity and files its own tax return (Form 1120) that reflects all items of income and loss.

- Tax-free creation if meet control test under section 351, which provides no gain is recognized if “property” is transferred to a corporation by one or more persons “solely” in exchange for “stock” in the corporation and “immediately after” the exchange the contributing person or group is “in control” of the corporation (i.e., 80% of all voting stock and 80% of all outstanding stock).

  **Example:** In connection with the formation of Newco, X and Y each transfers appreciated property. A receives 50 shares of voting common stock and B receives 50 shares of nonvoting common stock. Z receives 5 shares of nonvoting preferred stock solely in exchange for services rendered to Newco. Z is not a transferor of property and may not be counted in testing for “control.” Because transferors of property do not own 80% or more of each class of stock, the transaction does not qualify under section 351. Accordingly, X and Y must recognize gain on their property transfers. Z recognizes ordinary income on her receipt of stock for services.

- Transfers to an “investment company” do not qualify for non-recognition under section 351(e). The purpose of this rule is to prevent unrelated taxpayers from achieving tax-free diversification by transferring appreciated portfolio securities in exchange for stock of a newly formed pooled investment vehicle.

- If property is transferred in a section 351 transaction solely in exchange for stock, the transferor’s basis in the stock received will equal his basis in the transferred property immediately prior to the exchange as specified in section 358(a)(1). The corporation’s basis in the assets transferred in any section 351 transaction is the same as the transferor’s basis as provided in section 362(a).

  **Example:** On the formation of ABC Corp., A transfers land with a basis of $10,000 and a value of $60,000 and inventory with a basis of $30,000 and a value of $40,000 in exchange for 100 shares of ABC common stock with a value of $100,000. The transaction qualifies under section 351(a). A’s basis in the ABC stock is $40,000, which is the sum of A’s bases in the land and inventory. ABC Corp. takes a $10,000 basis in the land and a $30,000 basis in the inventory under section 362(a).

- If the sum of the liabilities assumed by the corporation in a section 351 transaction exceeds the aggregate adjusted basis of the properties transferred by a particular transferor, the excess is treated as gain from the sale or exchange of property under section 357(c). This rule is applied separately to each transferor of property.
Example: On the formation of ABC Corp., A transfers land with a basis of $30,000, a value of $100,000 and subject to a $55,000 liability, in exchange for ABC Corp. stock with $45,000 value. Under section 357(c), A must recognize $25,000 of gain (the excess of the $55,000 liability over A’s basis in the land). A’s basis in the ABC Corp. stock is: $30,000 (basis of land), less $55,000 (debt relief), plus $25,000 (gain recognized), or zero.

- The corporation pays a tax on its income (files Form 1120) and shareholders then pay a tax on any dividends they receive, hence the infamous corporate “double tax.”

- For purposes of subchapter C of the tax code, a “distribution” is any kind of payment by a corporation to its shareholders with respect to their stock. A “dividend” is a distribution out of the current or accumulated “earnings and profits” of a corporation. Payments to shareholders that are unrelated to their ownership of stock (such as salary, interest, rent, etc.) are neither distributions nor dividends.

- The term “earnings and profits” is not defined in the tax code or the regulations, but section 312 describes the effect of various transactions on earnings and profits. In general, earnings and profits are determined by starting with taxable income and making certain additions, subtractions and adjustments.

- Distributions in excess of current or accumulated E&P are a return of capital, which are offset against stock basis.

- To avoid double tax, shareholders who are employees often attempt to pay substantially all corporate profit in salary and bonus (a technique that works as long as the IRS does not successfully argue the compensation was too high, resulting in a portion of the compensation being recharacterized as a dividend).

- Other strategies to transfer funds from a C corporation to its shareholders include excessive rent or other payments to shareholders for assets sold to the corporation. Alternatively, a shareholder may seek to purchase property from the corporation at a bargain, with the dividend being the difference between the amount paid by the shareholder and the actual value of the property.

- If the corporation pays a dividend with appreciated property, the company recognizes income equal to the fair market value of the asset less its basis. The shareholder then recognizes dividend income equal to the fair market value of the asset received (usually, a disastrous tax result).

Example: XYZ Corp. distributes Property A ($30,000 value, $10,000 adjusted basis) to its shareholder, A. The corporation recognizes $20,000 gain on the distribution. Additionally, A recognizes $30,000 of dividend income.

- Dividends and distributions need not be pro rata among all shareholders: different classes of stock can be created to provide varying rights and preferences to shareholders.
(i.e., common stock and preferred stock can have different voting, dividend and liquidation rights).

- No special capital gain rate for C corporation on asset sale.

- For stock issued as compensation for services, the value of the stock will represent ordinary income to recipient and a tax deduction to the corporation; statutory and non-statutory stock options available; exercise of option must be analyzed for tax consequences.

- Stock issued for services is not considered as issued in return for property under section 351. A service provider recognizes ordinary income under section 61 on the value of any stock received from the corporation for past, present or future services. The timing of the income is determined under section 83. If the stock is subject to a substantial risk of forfeiture and is not transferrable, the service provider is taxed on the fair market value of the stock at the time the restrictions lapse less the amount (if any) paid for the stock. The service provider, however, may elect under section 83(b) to be taxed on the fair market value of the stock at the time of transfer less any amount paid. In that event, no additional income is recognized when the restrictions lapse, and no loss (except for any amount paid) is allowed if the stock is forfeited. In either case, the service provider’s basis for the stock is the amount paid plus any amount included in income.

**Example:** On the formation of New Corp in Year No. 1, A receives 200 shares of stock (valued at $50,000) in exchange for future services. The stock is not transferable and is subject to a substantial risk of forfeiture and will not vest until Year No. 5. Assume that the stock will be worth $200,000 in Year No. 5. Under section 83(a), A has no income in Year 1 and $200,000 of ordinary income in Year 5, and his basis in the stock is $200,000. If A makes a section 83(b) election, he has $50,000 of ordinary income in Year 1, his basis in the stock is $50,000, and he has no additional income when the restrictions lapse in Year 5. If A sells the stock in Year 5 after having made an election under section 83(b), he recognizes $150,000 long-term capital gain. If he forfeits the stock in Year 3, A will not have any loss to deduct.

- Normal employee payroll taxes will apply to compensation paid to employee-shareholders.

- The tax year is the accounting year of the corporation, which may select a fiscal year other than the calendar year.

- Tax-free reorganization is available under section 368.

- Corporate losses subject to general corporate rules; do not pass through to shareholders.

- The at-risk rules and passive activity rules apply at corporate level.

- The sale of stock will result in capital gain treatment to the seller (redemptions may be dividends and need to be carefully analyzed; must be in substance a true redemption);
possible election by buyer to treat as asset purchase under §338 (but usually not workable with C corporation).

- With respect to a sale of assets, gain or loss computed at the corporate level, asset by asset; no special capital gain rate limit at corporate level.

- On the death of a shareholder, no entity asset step-up in basis. Only stock step-up in basis.

- An advantage of C corporations over other forms of business organization, including S corporations, is that part of the gain on the sale of stock of a C corporation recognized by an individual shareholder can be excluded from taxable gain under section 1202 if the stock qualifies as “small business stock” and has been held for at least five years. Additionally, if a stock has been held for six months, tax on the gain can be postponed under section 1045 by rolling the sales proceeds over tax-free into an investment in qualified small business stock issued by another corporation. Among other requirements, qualified small business stock must be issued by a corporation that has always been a C corporation.

6. **S-Corporation.**

An S-corporation is a corporation that is taxed as a pass-through entity. However, it is not taxed as a partnership, which gives rise to several interesting differences between it and an LLC taxed as a partnership. For instance:

**TAX CHARACTERISTICS:**

- Tax-free creation if meet control tests under section 351 (like the C-corporations); Section 721 has no application to formation of an S corporation.

- The profit and loss of an S-corporation flows through to the shareholders on a pro-rata basis. Allocation of profit and loss in any fashion other than pro-rata is restricted by the second class of stock prohibition, which is different than partnership “substantial economic effect” allocations. Voting and nonvoting stock is allowed, but all shares must have identical economic rights. This is different than C-corporations (which can have different classes of stock with varying economic rights) and partnerships (which may provide for priority or preferred returns and disproportionate distributions).

- The basis of each shareholder’s stock in an S corporation is first increased by the shareholder’s share of allocated income and decreased, but not below zero, by distributions to the shareholder and then decreased by the shareholder’s allocated losses. If allocated losses exceed the shareholder’s stock basis, they may be applied against and reduce (but not below zero) the shareholder’s basis in any S corporation debt.

**Example:** A is a shareholder in an S corporation who paid $5,000 for her stock and loaned the corporation $1,000 in exchange for a corporate note. During the corporation’s first
taxable year (year 1), C is allocated $6,000 of S corporation income and $1,000 of S corporation loss. At the end of year 1, her stock basis will be $10,000, calculated as the $5,000 original stock basis plus $6,000 of allocated income less $1,000 of allocated loss. C’s basis in the corporate note remains $1,000.

In Year 2, C’s share of the corporation’s tax items consist of $12,000 of operating loss. C can only deduct $11,000 of the loss (the total of her stock and debt basis in the corporation). The remaining $1,000 of loss will be suspended and carried over to Year 3. C’s basis in her stock and debt will be reduced to zero.

In Year 3, the corporation’s business improves and C’s share of the corporation’s tax items consists of $5,000 of operating income. C will include the $5,000 of income in her personal tax return and will be allowed to deduct the $1,000 loss from the prior year. For basis purposes, the $5,000 increase attributable to the income will be reduced by the $1,000 loss. The remaining $4,000 of basis will be first allocated to the debt to restore it to its original $1,000 basis. At the end of Year 3, C’s stock basis is $3,000, which is the beginning basis of zero, plus the $5,000 income allocation less $1,000 of suspended loss less $1,000 attributable to the restoration of debt basis.

- Losses allocated to shareholders limited to outside basis; this basis does not include corporate debt (which is different than partnership). A shareholder’s share of S corporation losses and deduction is limited to the shareholder’s adjusted basis in the (1) stock of the corporation, and (2) indebtedness of the corporation to the shareholder. Losses and deductions disallowed under this rule carry over indefinitely and may be used when the shareholder obtains additional stock or debt basis by, for example, contributing or loaning additional funds to the corporation or buying more stock.

**Example:** C is a shareholder in an S corporation and has a $5,000 basis in her stock. C also loans the corporation $4,000 in exchange for a corporate note. If C’s share of the corporation’s loss for the year is $12,000, she will be limited to a $9,000 deduction (her combined basis in the stock and note) and will have $3,000 of suspended loss which will carry over until she obtains additional basis.

- Most courts agree that an S corporation shareholder does not obtain basis credit for a guaranty of a loan made by a lender directly to the corporation.

- For stock issued as compensation for services, the value of the stock will be taxable to the recipient as income; may use statutory incentive stock options or non-statutory stock options (similar to a C corporation but not partnership – no profits interest concept).

- On distributions, no tax until prior taxed income used (which is similar to partnership rule); but property distributed is deemed sold and this often creates gain to corporation (outside basis adjustment and pass through); if an appreciated asset is distributed, there will be a tax on the inherent gain in the asset (as with a C-corp) that will pass through to
all the shareholders on a pro rata basis. The value of the distributed asset would then be taxed to the distributee only to the extent it exceeded her basis in the stock.

- Distributions by an S corporation are tax free to the extent of the shareholder’s adjusted basis in stock of the corporation. If the distribution exceeds the shareholder’s stock basis, the excess is treated as gain from the sale or exchange of the stock, normally capital gain of the stock of the capital asset. Finally, the shareholder’s stock basis is reduced by the amount of any distribution which is not includable in income by reason of the distribution rules.

**Example:** A is a shareholder in an S corporation and has a $5,000 basis in his stock. If the corporation distributes $8,000 of cash to A, he will be permitted to receive $5,000 tax-free and $3,000 will be treated as gain from the sale or exchange of A’s stock. A’s stock basis will be reduced to zero as a result of the distribution.

- With respect to a property distribution, the amount of the distribution will be the fair market value of the property and the receiving shareholder will take a fair market value basis in the distributed property. The shareholder’s stock basis also will be reduced by the fair market value of the distributed property. At the corporate level, a distribution of appreciated property to a shareholder will require recognition of gain as if the property were sold. The gain will be taxed directly to the shareholders like any other gain recognized by the corporation.

**Example:** Assume Newco, an S corporation, breaks even in business during the year, and distributes appreciated land (a capital asset held long-term with a $50,000 fair market value and a $20,000 adjusted basis) to A, one of its two equal shareholders. Also, assume A’s basis in her Newco stock is $70,000 and Newco makes a simultaneous $50,000 cash distribution to B, its other shareholder. Newco will recognize $30,000 of long term capital gain, $15,000 of which will be taxed to each shareholder. A will receive a $50,000 tax-free distribution, and her stock basis beginning the next year will be calculated as follows:

\[
\begin{align*}
\text{\$70,000 stock basis} & + \text{15,000 allocated gain} \\
\text{- 50,000 amount of distribution} & \Rightarrow \text{\$35,000 New stock basis}
\end{align*}
\]

- Distributions for S corporations with a C corporation history are more complicated and require additional analysis.

- The S corporation files a form 1120S but does not pay any income tax.

- The tax year of the S corporation is generally the calendar year.
• Tax-free reorganization is generally available under section 368.

• The section 465 at-risk rules apply at the shareholder level.

• The section 469 passive activity rules apply at the shareholder level.

• Sale of stock results in capital gain treatment to seller; book-closing issues; possible election by buyer to treat as asset purchase under section 338(h)(10).

• On sale of assets, gain or loss computed at corporate level asset-by-asset; pass through and basis adjustment for shareholders; possible capital gain treatment.

• On death of a shareholder, no entity assets step-up in basis; only stock step-up in basis.

• Generally, employers engaged in an active trade or business must pay a federal self-employment tax of 15.3% on net income in 2017 (12.4% social security, 2.9% Medicare). An individual who is self-employed (i.e., the whole or partial owner of an S corporation) is taxed both as an employer and an employee on all annual income up to $127,200 as of 2017, after which only the portion of the employment tax applicable to Medicare applies (2.9% total and an additional .9% on wages in excess of $200,000). Generally speaking, current tax law provides no exception for entities treated as sole proprietorships or partnerships, but it does provide an exception for owners of an entity taxed as an S corporation. So long as the shareholder takes a reasonable salary for the shareholder’s employment with the S corporation, any amount over and above that reasonable salary is distributed to the shareholder without being subject to the withholding tax. Accordingly, the owner/employee of an S corporation can avoid being taxed at 15.3% (in 2017 12.4% social security, 2.9% Medicare) of the company’s net profit up to approximately $127,200 and at 2.9% of the company’s net profit thereafter with an additional .9% Medicare tax on wages in excess of $200,000. This is one advantage of an S corporation that does not exist for entities (such as an LLC) treated as a partnership or sole proprietorship. Incidentally, limited partners in a limited partnership who do not materially participate and do not provide more than 500 hours of service to the limited partnership each year generally do not have to pay the employment tax upon their receipts or tax allocations from the limited partnership.

Note: With careful planning, employment-related liabilities can be mitigated in the LLC context. However, due to increased complexities and costs associated with such enhanced planning, it is sometimes not feasible to utilize these alternative approaches.

IV. GENERAL SUMMARY

A. General Guidelines in Selecting Form of Entity. The most critical factors in choosing the proper form of entity include appropriate consideration of the following:
1. Questions to Ask.

- What type of assets will be owned by the entity (e.g., real estate, equipment, cash)?
- What type of business will the entity operate (passive, active)?
- Will the owners or the entity borrow funds as part of initial capitalization?
- What will owners contribute to the entity at formation in exchange for ownership interests?
- Who will be the owners (e.g., individuals, entities)? Do they individually have creditor issues?
- Is there potential for the company seeking private equity or capital from public markets?
- Will business be conducted in multiple states? Are there, or will there be, multiple owners?
- Is the business expected to generate profits or losses initially? If losses, for how long?
- How does the business expect to allocate profits and losses among the owners for tax reporting purposes? On a related note, how does the business expect to distribute cash?
- What is the anticipated method of exit from the business?
- Are there employment tax issues for owner-employees?
- Will equity be issued to service providers as compensation?
- What type of employment benefits are anticipated to be offered (e.g., cafeteria plans, medical reimbursement plans)?

2. General Rules of Thumb.

The choice of entity almost always leads to a one-way street. It is key to keep in mind that it is often possible to move from a partnership-taxed entity to a corporation on a tax-free basis. It is rare to transition from a corporation to a partnership-taxed entity on a tax-free basis. Thus, in case of doubt, it is best to start with a sole proprietorship or partnership-taxed entity rather than a corporation. A few other general rules of thumb:

1. LLCs should generally be given first consideration when forming a business organization. Existing sole proprietorships should consider an LLC (taxed as a disregarded entity). Existing general partnerships should consider converting to an LLC or an LLP, depending on the nature and type of business being conducted.
2. If it is anticipated that there may be owners other than individuals (such as trusts, corporations, LLCs or other entities), then an S corporation will likely not be a feasible solution. Similarly, if income tax allocations and/or profit or liquidating distributions will not be based strictly on proportionate ownership, then an S corporation will not be available. In either of these situations, either an LLC or a C corporation must be considered. Frequently, profit distributions are to be made to certain investors on a priority basis and/or certain investors are granted priority returns on their investment. These provisions can be addressed in the LLC context (taxed as a partnership) and in the C corporation (with preferred stock), but cannot be provided with an S corporation.

3. There are three common methods of exit: the asset sale, the taxable equity sale, and the tax-deferred reorganization. If the company anticipates an asset sale, an S corporation or LLC is generally best, as there would be substantial tax disadvantages to using a C corporation (i.e., double tax, no capital gain opportunity). With an S corporation or LLC, there is only one level of income tax, the basis of the buyer in purchased assets will be stepped-up on the sale and capital gain characterization is possible for the seller (i.e., goodwill), but consider section 751 characterization for LLC taxed as partnership. With a C corporation, there are two levels of income tax on an asset sale (and no potential for capital gain treatment) and consequently C corporation asset sale transactions are frequently abandoned.

If the company anticipates a taxable equity sale, then either an S corporation (particularly if it has made a section 338(h)(10) election to treat the equity sale as an asset sale) or an LLC may be an option. Once again, there would be only one level of income tax to the selling owners, potential capital gain treatment for the sellers and the basis of the purchasers in their ownership interests (and the inside basis of the selling entity’s assets) may be stepped-up upon the sale. However, for an LLC (taxed as a partnership), there may be re-characterization of capital gain to ordinary income under section 751. With a C corporation, part of the gain on the sale of the stock may be excluded from taxable gain under section 1202 if the stock qualifies as small business stock and has been held for at least five years. If the stock has been held for 6 months, tax on the gain may be postponed by rolling the sales proceeds over tax free into an investment in qualified small business stock issued by another corporation. The rollover provision, set forth in section 1045, may be elected if the seller invests in new qualified small business stock within 60 days following the sale. Additionally, if a C corporation is used, then there would be one level of tax to the selling shareholders and a basis step-up on the purchased stock, but the basis of the assets inside the corporation would not be stepped up, which is a distinct disadvantage to the buying party and often makes the stock sale of a C corporation not feasible.

If the company anticipates a tax-deferred reorganization or some sort of stock exchange, then the S corporation or C corporation generally is best, as partnership-taxed entities cannot participate on a tax-deferred basis. Generally speaking, for entities where it is expected that there will be a merger or reorganization of some sort with a public company, a C corporation is used, because it is anticipated that there will be private equity or capital from public markets in connection with the organization and operation.
of the corporation prior to the exit of the founding owners and the shareholder and stock limitations of the S corporation usually prove to be prohibitive to the business plan. It may be possible to initially form such an entity as an LLC in an effort to preserve the potential benefits of sections 1202 and 1045 and to allow the owners to personally benefit from start-up losses due to the flow-through nature of the LLC, and then convert from the LLC to the C corporation before a reorganization or sale transaction. However, the conversion would need to be “old and cold” to avoid IRS assertions that the LLC entity was, in actuality, the real party to the reorganization transaction and that the tax benefits available to the corporation may not be utilized.

4. If it is anticipated that equity of the entity will be used as compensation for key personnel, then an LLC (taxed as a partnership) should be given strong consideration, because the issuance of a profits interest for services will not be a taxable event to the recipient worker or the issuing LLC.

5. S corporations are often best suited for companies in which owners will be individuals and will be employees. This allows for the reduction in employment tax liability and often results in significant financial benefit to the business owners. It is established law that an employee / S-corp shareholder may receive both salary payments subject to self-employment tax and profit distributions as a shareholder that are not subject to FICA or SECA. The only limit on this structure is that the salary payments must be reasonable, which in this case means “high enough” rather than “too high” as the IRS challenges for C-corporations.

6. If it is anticipated that the business will be highly successful and that the owners will likely be withdrawing substantial amounts from the business venture, then an S corporation or an LLC should be considered due to its flow-through tax attributes, which will eliminate any concern of IRS challenges to excessive compensation that may be paid to owner-employees in the C-corporation context.

7. If it is anticipated that there will be start-up losses, it may be advisable to form a partnership-taxed entity (i.e., an LLC), perhaps converting to (or electing) S corporation status upon achieving profitability. Particularly if the business will be capitalized in part with funds borrowed by the entity and guaranteed by the owners, use of an LLC taxed as a partnership should be given consideration.

8. If the entity will own appreciated or appreciating assets (such as real estate or equipment that will be depreciated but retain value), an LLC (taxed as a partnership) is the entity to use. Corporate entities will be taxed disadvantageously in these circumstances due to the tax consequences resulting from the distribution of appreciated assets from corporations.

9. If there are concerns about one of the owners individually having creditor issues, an LLC is the preferred entity because of its downstream liability protections.

10. If it is anticipated that business may be conducted in multiple states, and if the business may have multiple shareholders, consider potential administrative burdens of filing
income tax returns for business and shareholders if there is a pass-through entity. If a business is organized as a partnership or an entity is taxed like a partnership and transacts business in several states, then each of the partners, as well as the partnership, may be required to file tax returns in each state. Separate tax returns for the business and the owners may also be required if the business is organized as an S corporation. If the business is organized as a C corporation, only one tax return is required, and it will be filed by the business.

11. The manner in which the various forms of business entity are taxed in the state or states in which a business expects to transact business may also affect the choice of entity. For example, some states do not tax S corporations as pass-through entities, and using an LLC in these states may avoid undesirable double taxation of the income of the business. On the other hand, some states impose entity level taxes on LLCs that are not imposed on S corporations or other forms of business entity. If these taxes are high, another form of business entity may be more attractive.
## Choices of Entities

<table>
<thead>
<tr>
<th>Tax Law Entities</th>
<th>State Law Options</th>
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</thead>
<tbody>
<tr>
<td>Disregarded Entity</td>
<td>Sole Proprietorship</td>
</tr>
<tr>
<td>Partnership</td>
<td>LLC</td>
</tr>
<tr>
<td>(Subchapter K, sections 701-761)</td>
<td>General Partnership</td>
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<tr>
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<td>Limited Partnership</td>
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<td>LLC</td>
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<td>Corporation</td>
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<td>(Subchapter C, sections 301-385)</td>
<td>Professional Corporation</td>
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<tr>
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<td>Professional Corporation</td>
</tr>
<tr>
<td></td>
<td>LLC</td>
</tr>
</tbody>
</table>
TAX CONSIDERATIONS FOR CHOICE OF BUSINESS ENTITY

Berit L. Everhart
October 19, 2017

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Objectives

• Discuss the available tax classifications and how tax classifications relate to legal entity classification.

• Discuss if, when, and how you can elect tax status.

• Provide an overview of the tax characteristics of each tax status.

• Discuss common tax considerations that impact choice of entity.
Legal Entity Options

• Sole Proprietorship
• Partnership
  • General Partnership
  • Limited Partnership
  • Limited Liability Partnership
• Limited Liability Company
• Corporation
  • Business/For-Profit Corporation
    • Benefit Corporation
    • Professional Corporation
    • Non-Profit Corporation

Tax Classifications

• Disregarded Entity

• Partnership
  • Subchapter K, sections 701-761

• C Corporation
  • Subchapter C, sections 301-385

• S Corporation
  • Subchapter S, sections 1361-1379
Default Federal Tax Status for Domestic Entities

<table>
<thead>
<tr>
<th>Legal Entity</th>
<th>Default Tax Classification</th>
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<tbody>
<tr>
<td>Sole Proprietorship</td>
<td>Disregarded Entity</td>
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<tr>
<td>Single Member LLC</td>
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<tr>
<td>General Partnership</td>
<td>Partnership</td>
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<tr>
<td>Limited Partnership</td>
<td></td>
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<tr>
<td>Limited Liability Partnership</td>
<td></td>
</tr>
<tr>
<td>Multi-Member LLC</td>
<td></td>
</tr>
<tr>
<td>Corporation</td>
<td>C Corporation</td>
</tr>
</tbody>
</table>

Elective Federal Tax Status for Domestic Entities

- “Check the Box” election
  - Form 8832
  - Association, Partnership, LLC
    - Not available to Corporations
  - Retroactive up to 75 days
  - Once every 5 years
  - Treas. Reg. 301.7701-3

- S Election (Form 2553)
  - Corporation, LLC
  - S corporation requirements
    - Domestic corporation that is not an ineligible entity (i.e., DISC, certain financial institutions, insurance company)
    - 100 or less shareholders
    - S corporation shareholders
    - Single class of stock
  - Retroactive up to 75 days
Summary of Options

<table>
<thead>
<tr>
<th>Legal Entity</th>
<th>Available Tax Classification</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sole Proprietorship</td>
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</tr>
<tr>
<td>Corporation LLC</td>
<td>S Corporation</td>
</tr>
</tbody>
</table>

Overview of Characteristics
Disregarded Entity—Overview

- No separate entity recognized for tax purposes (i.e., disregarded entity).
- No entity level tax.
- No federal or state tax form filed for the business (e.g., individual owner reports profits/losses on individual IRS Form 1040, Schedule C).
- Business assets (and liabilities) owned by the owner for tax purposes.
- Generally, default federal tax status for single member domestic LLC.

Partnership—Overview

- Separate entity recognized for tax purposes. However, generally no entity level tax (i.e., flow-through or pass-through entity).
  - Exceptions: applicable state/local taxes (e.g., Washington’s Business & Occupation Tax).
- Informational income tax return (e.g., IRS Form 1065). Each owner will receive a Schedule K-1 with his/her/its allocable share of profits and losses.
- Business assets (and liabilities) owned by the entity for tax purposes.
- Generally, limited personal liability for business debts/liabilities.
  - Exception for owners who are general partners.
- Generally, default tax status for multi-member domestic LLC.
C Corporation – Overview

• Separate entity recognized for tax purposes.

• Entity level tax. Owners pay tax as distributions are received from the entity.

• Entity files its own income tax return (i.e., IRS Form 1120).

• Business assets (and liabilities) owned by the entity for tax purposes.

• Limited personal liability for business debts/liabilities.

• Default tax status for domestic incorporated entities.

S Corporation – Overview

• Separate entity recognized for tax purposes. However, generally no entity level tax (i.e., flow-through or pass-through entity).
  • Exceptions: built-in gains tax; excessive net passive income tax, applicable state/local taxes.

• Entity files its own tax return (i.e., IRS Form 1120S). Each owner will receive a Schedule K-1 with his/her/its allocable share of profits and losses.

• Business assets (and liabilities) owned by the entity for tax purposes.

• Limited personal liability for business debts/liabilities.

• S Election required (IRS Form 2553).

• Subject to entity and shareholder restrictions.
  • US corporate entity or LLC.
  • Business owned by no more than 100 qualified S shareholder(s).
  • One class of stock.
Common Tax Considerations in Choice of Entity

- Single taxation v. double taxation
- Entity filing requirements
- Ownership restrictions
- Appreciable assets and distributions in-kind
- Classes of stock and flexibility in allocating income
- Self-employment taxes
- Investment strategy
- Exit strategy
- Need for a “blocker”
**Example - Double Taxation (Ordinary Income)**

**Corporation**
- Net Income before tax: $1,000,000
- Entity Level Tax: $350,000
- Net cash available for distribution: $650,000
- Total tax paid: $504,700
- Net cash available to shareholders/owners: $495,300

**Partnership/Flow-through**
- Net Income before tax: $1,000,000
- Entity Level Tax: $--
- Net cash available for distribution: $1,000,000
- Total tax paid: $400,000
- Net cash available to shareholders/owners: $600,000

Assumes corporate tax rate of 35%, dividend rate of 20% and application of the 3.8% Net Investment Tax.

**Example – Distribution of Appreciated Property**

**Corporation**
- *$800,000 gain recognized on the distribution of the property.
- Corporation will be required to pay $280,000 in tax. (i.e., $800,000 x 35%).
- Shareholders will take the property with a basis equal to FMV.
- Applies to both S corps and C corps.

**Partnership**
- *Generally, no entity gain recognized.*
- *Owners will take property with basis of $200,000.*

Assumes 35% corporate tax rate.
Choice of Entity – General Rules of Thumb

• LLC provides the most flexibility from a tax perspective.

• Easier to move from pass-through to corporate tax status on a tax-free basis.

• Single level of tax often preferred.

Choice of Entity – General Rules of Thumb for Entities Taxed as Partnerships

• Often preferred because of the single level of tax.

• Flexibility in allocating profits/losses.

• Owners can take advantage of business losses.

• Ability of owners to leverage entity level debt to take advantage of business losses.

• Preferred when the entity will hold appreciated assets.

• Exit strategy
  • Sale of assets
  • Sale of equity
Choice of Entity – General Rules of Thumb for Entities Taxed as C Corporations

• Double level of taxation.

• Tax status will shield owners from filing tax returns in multiple jurisdictions when business is conducted in multiple states/taxing jurisdictions.

• Certain investors (e.g., VC) may prefer or require C corporation.

• Exit strategy
  • Tax deferred reorganization

Choice of Entity – General Rules of Thumb for S Corporations

• Ownership: If entity owners are anticipated, a S corporation will likely not be feasible.

• Owner/Employees: If the owners are individuals who will also be employees of the business, S corporations may provide an opportunity to reduce self-employment tax liability.

• Many of the same benefits available to an entity taxed as a partnership with the following exceptions:
  • No flexibility in allocating profits/losses.
  • Single class of stock requirement.
  • No ability to leverage entity level debt to take advantage of losses.

• Exit strategy
  • Sale of assets
  • Sale of equity
Choice of Entity – Questions to Ask

- How many owners and who will be the owners (e.g., individuals, entities)?

- What will owners contribute to the entity at formation in exchange for ownership interests?

- What type of assets will be owned by the entity (e.g., real estate, equipment, cash)?

- What type of business will the entity operate (passive, active) and where will the business be operated?

- Will the owners or the entity borrow funds as part of initial capitalization?

Choice of Entity – Questions to Ask (cont’d)

- Is the business expected to generate profits or losses initially?

- How does the business expect to allocate profits and losses among the owners for tax reporting purposes? On a related note, how does the business expect to distribute cash?

- Is there potential for the company seeking private equity or capital from public markets?

- What is the anticipated method of exit from the business?

- Are there employment tax issues for owner-employees?

- Will equity be issued to service providers as compensation?
Chapter 3

Estate Tax: Alive and Well in Oregon

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Heltzel Williams Law Firm
Salem, Oregon

Contents

I. What Is a Gift? ................................................................. 3–1
II. Federal Gift Tax .......................................................... 3–1
III. Oregon Gift Tax—There Is No Oregon Gift Tax .................. 3–2
IV. Select Income Tax Issues ............................................. 3–2
V. Assets Includable in a Decedent’s Estate (For Purposes of Estate Tax Calculation) .................. 3–3
VI. Federal Estate Tax .......................................................... 3–3
VII. Oregon Estate Tax (Formerly Oregon Inheritance Tax)—Chapter 118 .............. 3–5
VIII. Disclaimer Tax Planning vs. Marital Deduction Planning .................. 3–6
Presentation Slides .............................................................. 3–7
Sample Form—Joint Revocable Living Trust Agreement (Disclaimer Trust) ............. 3–17
Sample Form—Disclaimer by Individual .................................. 3–37
I. What is a Gift?

A. A gift occurs any time any item, money or otherwise, goes from Person A to Person B without adequate consideration and not for services rendered.

B. Paying an adult child’s expenses such as mortgage, rent, and food.

C. The “sale” of property to a child for less than fair market value. If the purchase price is below the fair market value, then it is a part-sale, part-gift.

D. The “loan.” If there is no intention that the borrower will pay back the amount and there is evidence of this intent, then the entire loan amount is a gift. No payments at all can be evidence that there was no intention of repayment.

E. No or low-interest loans. IRC Section 7872.

F. Adding children as joint owners (not as a beneficiary) on real property in order to avoid probate.

II. Federal Gift Tax.

A. Lifetime exemption of $5,490,000 for use either during life or at death. This amount is inflation adjusted. There is no automatic sunset for the law.

B. Any gifts not covered by specific exclusions require the filing of a Gift Tax Return (Form 709) by April 15 of the following year. The penalty for failure to file is a percentage of the tax due. Also, if no return is filed, no statute of limitations will run on the valuation of the gift.

C. Unlimited marital deduction for assets passing to a US Citizen Spouse. There is a $149,000 per year exclusion for gifts to a noncitizen spouse. This exclusion is inflation adjusted.

D. Annual exclusion of $14,000 per year per recipient. IRC§2503(b)(1).

   i. Present interest requirement.

   ii. Check has to clear before death. Consider bank checks instead.
E. Tuition and Medical exclusion of an unlimited amount.

i. Must be paid directly to the institution.

ii. 529 plans, loan payoffs and reimbursements do not qualify.

iii. Room, board, books and technology do not qualify.

iv. Tuition at any level, not just college, qualifies. See IRC §170(b)(1)(A)(ii).

F. Charitable gifts are unlimited for gift tax purposes.

III. Oregon Gift Tax – There is no Oregon gift tax.

IV. Select Income Tax issues.

A. The basis of an asset received by gift is the basis of the transferor. The basis of an asset received because of the death of the prior owner is generally the fair market value of the asset on date of death. This new basis at death is generally known as the stepped-up basis (can be step-down) IRC §1014.

B. Income in Respect of a Decedent (IRD) does NOT get a stepped-up basis. The unrecognized taxable income still has to be recognized by the recipient. E.g. US savings bonds, IRAs and other pre-tax retirement savings, land sale contracts.

C. An inheritance other than IRD is not taxable income for the recipient. There may be net income during administration that passes out to the beneficiary, however.

D. The age of the IRA beneficiary will usually determine the maximum number of years over which the account has to be distributed.

i. An individual named as beneficiary will get to use his or her life expectancy to extend withdrawal over his or her entire lifetime. The beneficiary could always take withdrawals more quickly.
ii. The estate of the decedent named as beneficiary (or as a default beneficiary) would generally require that the IRA be distributed over no more than five years if the decedent died prior to beginning required minimum distributions. If the decedent died after commencing required minimum distributions, then the decedent’s life expectancy at time of death may be used to determine the longest timing of distributions.

iii. A trust named as beneficiary that does not qualify for special treatment under the tax regulations has the same rules as an estate.

V. Assets includable in a Decedent’s Estate (For Purposes of Estate Tax Calculation).

A. Assets passing pursuant to probate.

B. Assets passing pursuant to a revocable living trust.

C. Life insurance on the decedent’s life owned by the decedent.

D. Annuities and all retirement accounts (IRA, 401(k), 403(b), . . .). These are at full face value and are not reduced for the income tax owing.

E. Assets over which the decedent held a general power of appointment.

F. Assets which the decedent gave away, but held a retained interest either legally (life estate) or by implied agreement.

G. Be careful of client ideas to avoid inclusion of property while the client still controls or uses the asset.

VI. Federal Estate Tax.

A. Lifetime exemption of $5,490,000 for use either during life or at death. Any amount used during life for gifts is not available at death. This amount is inflation adjusted. The tax rate for amounts over the exemption is 40%.
B. Unlimited marital deduction.

i. Spouse has to receive the assets outright or in a trust that qualifies as a general power of appointment trust or qualified terminable interest property (QTIP) trust.

ii. Gifts to a spouse who is not a US Citizen do not qualify for the unlimited marital deduction. A trust that qualifies as a Qualified Domestic Trust can be used to obtain the marital deduction. There are also some treaties that provide limited relief.


C. Portability of unused lifetime exemption.

i. The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 added the ability for a surviving spouse to use a deceased spouse’s unused Federal lifetime exemption.

ii. The trap is that an estate tax return (Form 706) has to be timely filed at the first spouse’s death.

iii. If the surviving spouse remarries and the second spouse passes away first, the surviving spouse can no longer use the unused exemption of the first spouse, but only qualifies for the unused exemption of the second spouse.

iv. Is there a requirement for children of a prior marriage to file a Form 706 Estate Tax Return costing several thousand dollars or more in order to allow the surviving step-parent to receive the unused lifetime exemption when the surviving step-parent received no assets? If the surviving step-parent received an asset and thus is allowed to file, how does he or she obtain information from step-children in order to complete the return?

v. You may want to address portability in prenuptial agreements especially when estates probably will not warrant the cost of filing a Form 706 Federal Estate Tax Return.
D. Charitable deductions are unlimited for estate tax purposes.

VII. Oregon Estate Tax (formerly Oregon Inheritance Tax) – Chapter 118.

A. $1,000,000 exemption. Because gifts are not taxed in Oregon, the full $1,000,000 will be available at death. The tax rate schedule is as follows:

<table>
<thead>
<tr>
<th>1</th>
<th>2</th>
<th>Tax on Amount in Column 1</th>
<th>Rate on Amount Over Column 1</th>
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<tr>
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<td>$1,022,500</td>
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<td>16.00%</td>
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</table>

B. There are three states west of the Mississippi River with an estate tax. Washington with a $2 million inflation adjusted exemption ($2,129,000) and Hawaii with an exemption equal to the federal exemption are the other two states.

C. Generally, what is included in the taxable estate and the allowable deductions are based on federal estate tax law. In determining whether an OR706 is required, the value of all out of state property must be included.

D. Oregon has another way to qualify property for the marital deduction called an Oregon Special Marital Property Election.

E. Oregon has a special Natural Resources Credit (NRC) for agricultural, timber and commercial fishing property.

F. There is no Oregon equivalent to the federal portability of unused exemption to a surviving spouse.
VIII. Disclaimer Tax Planning vs. Marital Deduction Planning.

See Slides
Estate Tax: Alive and Well in Oregon

Barbara Jo Smith
Heltzel Williams PC
Salem, OR

Paradigm Shift since 2012

- 1) Federal Exemption is $5,490,000 for gifts during life and transfers at death
- 2) Federal Exemption is inflation adjusted
- 3) Federal Portability between spouses
- 4) Federal $14,000 annual exclusion per donee
- 5) Oregon has no Gift Tax
- 6) Oregon’s exemption is $1,000,000 for transfers at death (not inflation adjusted)
- 7) Oregon’s estate tax rate starts at 10%
- 8) Capital Gains rates (federal and OR combined) 24% for most, but could be 29%
Chapter 3—Estate Tax: Alive and Well in Oregon

**Gifts**

1) What is a Gift
2) Remember $5,490,000 exemption (portion used during life not available at death)
3) Clients’ focus on “$10,000” annual exclusion
4) Tuition and Medical exclusion
5) Gift Tax Filing Requirement - if gift does not qualify for the annual or other exclusions; due April 15 after year of the gift along with income tax return
6) Oregon has no gift tax and gifts do not count against the $1,000,000 exemption.

**Select Income Tax Rules**

1) Carryover basis for assets given away (except if recipient claims loss)
2) Stepped up basis (or down) to date of death value for assets transferring at death
3) Income in Respect of Decedent (IRD) does NOT get a stepped up basis (e.g. US Savings Bonds, IRAs, Annuities, Land Sale Contracts)
4) The principal portion of the inheritance is not taxable income
5) IRAs and retirement plans have their own set of rules for income
Chapter 3—Estate Tax: Alive and Well in Oregon

Assets Includable in the Taxable Estate

- 1) Probate assets
- 2) Revocable living trust assets
- 3) Life insurance on decedent’s life owned by decedent
- 4) Annuities and all retirement savings (not discounted for income tax owing)
- 5) Assets over which decedent has a general power of appointment

If a client has an idea to make an asset not includable, but the client still controls it, then the idea probably will not work. IRC Section 2036.

Unlimited Marital Deduction and Federal Portability

- Assets passing to a US Citizen spouse have an unlimited deduction, so no tax is usually owing at the first death if assets pass to the surviving spouse.

- For federal purposes, if a Federal Estate Tax Return (form 706) is filed after the first death, then the surviving spouse can claim the unused exemption. There is no double/triple dipping through multiple marriages because you only get the unused exemption of your last spouse to die.
Oregon Estate Tax

- 1) $1,000,000 exemption not inflation adjusted
- 2) Use the gross estate no matter where assets are located to determine the filing requirement
- 3) There is a percentage credit for real property located outside of Oregon
   You do not get to ignore the out of state property for determining the filing requirement and the amount of the total tax before the credit.
- 4) Natural resources credit (farms, timber and fishing)
- 5) No portability of the unused exemption between spouses
- 6) Unlimited charitable deduction is available

Paradigm Shifts

- Keeping gifts within the annual exclusion not as important
- Gifts are better than loans to children for Oregon estate tax purposes
- Deathbed gifts can save Oregon estate tax – checks have to clear
- Need to evaluate whether capital gains taxes on assets given away will exceed the Oregon estate tax
- Putting out-of-state property into LLCs will make it taxable in Oregon even if the LLC is organized in another state
- Partial or minority interests that result in discounts may limit step up in basis and may not be needed to save estate tax
## Oregon Marital Deduction Planning

First Death
- **Joint Trust**
  - $1,500,000

  Use $1,000,000 Exemption

  **Credit Shelter**
  - $750,000

Second Death
- **Survivor’s Trust**
  - $750,000

  Taxable

---

### Mr. & Mrs. Jones
Summary of Assets

<table>
<thead>
<tr>
<th>Joint</th>
<th>1 Residence (Net of Mortgage)</th>
<th>$400,000.00</th>
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<tbody>
<tr>
<td></td>
<td>2 Checking</td>
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<tr>
<td></td>
<td>3 Savings</td>
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<tr>
<td></td>
<td>4 Brokerage (Stock, Mutual Funds)</td>
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<tr>
<td></td>
<td>5 Automobiles</td>
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<td></td>
<td>6 Household &amp; Personal Effects</td>
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<td></td>
<td>Subtotal</td>
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</tr>
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</table>

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<tr>
<th>Mr. Jones Retirement</th>
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</thead>
<tbody>
<tr>
<td>1 IRA</td>
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<tr>
<td>2 Roth IRA</td>
</tr>
<tr>
<td>Subtotal</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Mrs. Jones Retirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 IRA</td>
</tr>
<tr>
<td>2 Roth IRA</td>
</tr>
<tr>
<td>Subtotal</td>
</tr>
</tbody>
</table>

| Total | $1,701,000.00 |
Mr. and Mrs. Jones’ plan

Joint Trust

Credit Shelter Trust

Survivor's Trust

Dispositive Plan

IRA Roth IRA

IRA Roth IRA

Beneficiaries

Mr. and Mrs. Jones’ Plan

Joint Trust

$701,000

Credit Shelter Trust

$125,500

Survivor’s Trust

House (F)
Cars
H & P Effects
$125,500

Dispositive Plan

IRA Roth IRA

$500,000

IRA Roth IRA

$500,000

Survivor

Beneficiaries
Mandatory Formula Clauses

- **Pros**
  - No Risk of messing up disclaimer
  - May want to direct assets to unamendable credit shelter trust
  - Can give surviving spouse a limited power of appointment (LPOA) to change dispositive plan

- **Cons**
  - Credit Shelter Trust lasts for survivor’s life
  - Annual Form 1041 tax return fee
  - May save zero tax, but mandatory means you still have to create and fund credit shelter trust

Disclaimer Planning

- **Pros**
  - Flexibility to decide at first death based on all facts and circumstances

- **Cons**
  - Cannot give any ability for the surviving spouse to change dispositive provisions of credit shelter trust
  - The surviving spouse is never in a good position to make the disclaimer decision
  - The surviving spouse may accept benefits before the decision to disclaim is made
Qualified Disclaimer Requirements

IRC Section 2518

1. The disclaimer must be in writing, describe the disclaimed property, and be signed by the disclaimant or the disclaimant’s legal representative. §2518(b)(1); Regs. §25.2518-2(b)(1).

2. The writing must be received by the transferor of the interest, his or legal representative, or the holder of the legal title to the property to which the interest relates not later than the date which is 9 months after date of death. §2518(b)(2).

3. The disclaimant must not have accepted the interest or any of its benefits. §2518(b)(3); see also ORS 105.643(2)(a). A disclaimer must include the entire interest in the property, so all income on the disclaimed amount must be segregated. Icf; 25.2518-3(c). The regulations provide that continued occupancy of a residence by the surviving joint tenant after disclaiming the one-half survivorship interest does not cause the survivor to be deemed to have accepted the interest or any of its benefits because occupancy after the joint owner’s death is consistent with the survivor’s retained undivided ownership interest. Regs. §25.2518-2(c)(5) Ex. 10.

4. The interest must pass, without any direction on the part of the disclaimant, to either: (a) the spouse of the decedent, or (b) a person other than the person making the disclaimer. §2518(b)(4). Also, if the disclaimer is of specific property transferred in trust, the property must be removed from the trust and pass to the persons identified in the previous sentence. Regs. §25.2518-3(a)(2).


Disclaimer Requirements

ORS 105.623 et seq.

1. Be in writing or otherwise recorded by inscription on a tangible medium or by storage in an electronic or other medium in a manner that allows the disclaimer to be retrieved in perceivable form. ORS 105.629(3)(a).

2. Declare that the person disclaims the interest in the property. ORS 105.629(3)(b).

3. Describe the interest in property that is disclaimed. ORS 105.629(3)(c).

4. Be signed by the person making the disclaimer. ORS 105.629(3)(d).

5. Be delivered or filed as provided in ORS 105.642.
More Oregon statutory requirements

- **ORS 105.643(1):** A disclaimer is barred by written waiver of the right to disclaim.

- **ORS 105.643(2)(a),(b),(c):** A disclaimer is barred if before the disclaimer becomes effective (a) the disclaimant accepts the interest; (b) voluntarily assigns, conveys, encumbers, pledges, or transfers the interest, or contracts to do so; or (c) there is a judicial sale. See also IRC §2518(b)(3) (acceptance of benefits).

- **ORS 105.645:** Notwithstanding any other provision of ORS 105.623 to 105.649, if as a result of a disclaimer or transfer the disclaimed or transferred interest is treated pursuant to the provisions of the IRC, as in effect on December 31, 2010, as never having been transferred to the disclaimant, then the disclaimer or transfer is effective as a disclaimer under ORS 105.623 to 105.649.

- **ORS 105.648:** A disclaimer is not allowed if the purpose or effect of the disclaimer is to prevent recovery of money or property under ORS 411.620, which provides for the recovery of public assistance obtained or disposed of unlawfully.
This form is for the purpose of a continuing education program for attorneys and is not meant as a complete trust agreement. As the presentation indicates, you need to think through your choices and understand what you are adding or changing in relation to the broader tax rules and client’s situation. This form contemplates a married couple who only have children of their marriage.

**JOINT REVOCABLE LIVING TRUST AGREEMENT**


BETWEEN: @1 and @2, as Settlors

AND: @3 and @4, as Trustee.

*Usually the Trustees and Settlors will be the same persons.*

We, @1 and @2, as Settlors, establish a trust with Trustee. Although two Trustees shall serve together as the initial Trustees, we will refer to both initial Trustees and any Co-Successor Trustees in the singular as “Trustee.” The parties agree that the property of this trust shall be held, managed, and distributed by Trustee as hereafter provided.

**ARTICLE 1**

**NAME OF TRUST**

This trust may be called THE # TRUST.

**ARTICLE 2**

**FAMILY**

We are married and the parents of *. The provisions of this trust for the benefit of our children shall also include any other child or children of ours born or adopted by us hereafter. Neither Settlor has any other child, either living or deceased.

**ARTICLE 3**

**TRUST PROPERTY**

*Many provisions of this agreement can be simplified if only Exhibit A is used.*

The Settlors, jointly or individually, have transferred and delivered to Trustee the property described on Schedules A, B, and C. Settlors acknowledge that prior to transferring the property described on the Schedules, such property may have been owned.
by the Settlors separately or jointly, with rights of survivorship. It is Settlors’ intention, and they expressly agree and acknowledge, that upon transfer of such property to the trust, each Settlor has an equal beneficial interest in the assets described on Schedule A. @1 has the sole beneficial interest in the assets described on Schedule B, and @2 has the sole beneficial interest in the assets described on Schedule C. Any property transferred, delivered, and accepted by the Trustee, whether or not described on the above schedules, shall be held, managed, and disposed of according to the terms of this Agreement.

**ARTICLE 4**
**ADDITIONAL PROPERTY**

The Trustee may receive and accept other property, real or personal, including life insurance policies, devised, bequeathed, granted, conveyed, assigned, or made payable to Trustee by either or both Settlors or by any other person or persons, which upon acceptance by the Trustee shall become part of the trust estate and be subject to the terms of the trusts created in this Agreement. Any property added or substituted to this trust may be, or may not be, described in appropriate schedules and may be appropriately connected to this trust by signatures or initials of the parties, or their officers or agents, or by wills or trusts of any other persons. All property that is added to the trust shall be deemed to be Schedule A property unless it is otherwise specifically designated.

**ARTICLE 5**
**AMENDMENT AND REVOCATION**

5.1 While Both Settlors are Living. While both Settlors are living:

5.1.1 Jointly. Both Settlors, acting jointly, may amend or revoke this trust as to all or any part of the trust property.

5.1.2 Individually. Either Settlor may amend or revoke this trust as to an undivided one-half beneficial interest in the property designated as Schedule A property. @1 may amend or revoke this trust as to the whole or any part of the property described on Schedule B. @2 may amend or revoke this trust as to the whole or any part of the property described on Schedule C.

5.1.3 Effect of Partial Revocation. In the event of a revocation by Settlors or either of them, any assets remaining in the trust shall be held, administered, and distributed according to the terms of this trust. Settlors may wish to consider amending the trust to govern the administration and distribution of the remaining trust assets.

5.2 After the Death of the First Settlor to Die. After the death of the first Settlor to die:

2 - JOINT REVOCABLE LIVING TRUST AGREEMENT
5.2.1 **Definitions.** The first Settlor to die shall be known as the Deceased Settlor, and the other Settlor shall be known as the Surviving Settlor.

5.2.2 **Amendment and Revocation.** The Surviving Settlor may amend or revoke this trust with respect to that part of the property designated as Schedule A property that is not included in the Deceased Settlor’s gross estate for federal estate tax purposes, and also with respect to the property over which the Surviving Settlor is given the sole right to revoke or amend by Section 5.1.2.

5.2.3 **Amendments Affecting Article 9.** The Surviving Settlor shall have no right to amend or revoke Section 9.2 **Disclaimer Trust.** The Surviving Settlor shall have an unlimited right to amend or revoke Section 9.3 **Survivor’s Trust.**

5.3 **Indemnification of Trustee.** Upon any such revocation the Settlors or Settlor, as the case may be, shall pay all sums due to the Trustee and shall indemnify the Trustee to the Trustee’s satisfaction against liabilities lawfully incurred in the administration of the trust.

5.4 **Method of Amendment or Revocation.** Any amendment or revocation shall be by written agreement executed by the appropriate Settlor or Settlors and accepted by Trustee. The rights of amendment, withdrawal, and revocation reserved by Settlors or Settlor must be exercised by Settlors or Settlor personally and may not be exercised by any other person, including any agent, guardian, or conservator, except that amendment, withdrawal, or revocation by a Settlor may be authorized, after notice to the Trustee, by the court that appointed the conservator or by an agent acting under a durable power of attorney that specifically authorizes such action.

ARTICLE 6
DISPOSITION OF INCOME AND PRINCIPAL DURING SETTLORS’ JOINT LIFETIMES

While both Settlors are living, Trustee shall:

6.1 **Distributions.**

6.1.1 **Settlors.** Distribute to Settlors such amount or amounts from the income or principal of the assets described on Schedule A as one or both Settlors from time to time request. Distribute to @1 such amount or amounts from the income or principal of the assets described on Schedule B, if any, as @1 from time to time requests. Distribute to @2 such amount or amounts from the income or principal of the assets described on Schedule C, if any, as @2 from time to time requests.

6.1.2 **Form of Request if Neither Settlor is Serving as Trustee.** If neither Settlor is serving as a Trustee at the time any request described in Section 6.1.1 is
made, the request shall be in writing, signed by the Settlor, and delivered to the Trustee within the requesting Settlor’s lifetime.

6.1.3 Principal Payments. Any payments from principal shall be made without regard to Settlors’ other resources, and in making such payments, Trustee shall be protected in relying upon the statements and directions of Settlors or Settlor, as the case may be. Any such directions shall be made by a Settlor personally and not by any agent, guardian, or other person or firm.

6.2 Incapacity. If either or both Settlors become incapacitated, Trustee may:

6.2.1 Distributions. While and only while Trustee believes that such incapacity continues, apply such amount or amounts of the income and principal, or of either the income or principal, of any of the assets of the trust estate that are subject to the incapacitated Settlor’s direction, either individually or jointly with the other Settlor, as Trustee deems to be necessary for the health and support of both of us, in order to enable us to maintain our accustomed standard of living.

6.2.2 Gifts. Make gifts with a value not in excess of the annual exclusion amount pursuant to IRC Section 2503(b) or its successor provision to any of our lineal descendants or their spouses. In addition, pay healthcare and education expenses for any of our lineal descendants or their spouses. Make other gifts to any person or charitable organization provided that the gifts to the person are consistent with the dispositive provisions of our trust that take effect after our deaths and provided that the gifts to the charitable organization are to organizations to which a Settlor has contributed during any of the five calendar years immediately preceding the commencement of the Settlor’s incapacity. Any gift made by a Trustee may be treated like an advancement in the Trustee’s sole discretion. Trustee shall pay from the trust assets any gift tax that might arise by reason of any gift.

6.2.2.1 Limitations – Settlor is Trustee. The powers of a Trustee who is a Settlor to make gifts pursuant to Section 6.2.2 are limited as follows: the Trustee may not make gifts to himself or herself, the Trustee’s estate, the Trustee’s creditors or the creditors of the Trustee’s estate, or to any person dependent upon the Trustee.

[The next provision and the two below that with the same name are three options for gifts. If you give the child-trustee an unlimited right to make gifts to himself or herself, it could be a general power of appointment thereby including the parents’ assets in the child’s estate if the child dies first.]

6.2.2.2 Limitations – Other Trustee. The powers of a Trustee who or which is not a Settlor to make gifts pursuant to Section 6.2.2 are limited as follows: the Trustee may not make gifts to himself or herself, the Trustee’s estate, the Trustee’s
creditors or the creditors of the Trustee’s estate, or to any person dependent upon the
Trustee.

**Limitations – Other Trustee.** The powers of a Trustee who or which is not a Settlor to make gifts pursuant to Section 6.2.2 are limited as follows: the Trustee may make gifts to himself or herself, Trustee’s spouse, or persons dependent upon Trustee so long as such gifts do not exceed the sum of $5,000 in the aggregate during any calendar year. In no event is Trustee authorized or permitted to make any transfers pursuant to the above powers to the Trustee’s estate, the Trustee’s creditors, or the creditors of the Trustee’s estate.

**Limitations – Other Trustee.** The powers of a Trustee who or which is not a Settlor to make gifts pursuant to Section 6.2.2 are limited as follows: Prior to making any transfers to Trustee, Trustee’s spouse, or any person dependent upon Trustee, Trustee shall first obtain the written consent of all adult members of the incapacitated Settlor’s family (other than Trustee) who would be entitled to more than a ten percent interest in the incapacitated Settlor’s estate (probate and nonprobate) if the incapacitated Settlor died immediately before the transfer was made. In no event is Trustee authorized or permitted to make any transfers pursuant to the above powers to the Trustee’s estate, the Trustee’s creditors, or the creditors of the Trustee’s estate.

**6.3 Trust Purpose During Settlors’ Lifetimes.** The primary purpose of this trust is to provide Settlors with the highest possible quality of life. The Trustee shall be liberal in making distributions to accomplish this purpose. The rights of other trust beneficiaries shall be secondary to the Settlors’ rights as beneficiaries.

**ARTICLE 7**

**ADMINISTRATIVE TRUST, TAXES, DEBTS, AND OTHER EXPENSES**

After a Settlor’s death:

**7.1 Administrative Trust.** Trustee is authorized to establish an “Administrative Trust.” As Trustee of such trust, the Trustee is authorized to take all steps necessary or appropriate to administer the Deceased Settlor’s affairs, including preparation of an inventory of trust assets; filing all necessary and appropriate tax returns and paying any tax, interest, or penalties due thereon; paying any claims, debts, and funeral expenses of a deceased Settlor; and paying all administration expenses of the trust. After completing its activities, the Trustee shall distribute the trust estate according to the terms of this Agreement.

**7.2 Taxes.** Unless otherwise provided in the will of the Deceased Settlor or Surviving Settlor and except as otherwise provided in this trust Agreement, all estate, inheritance, succession, transfer, and other taxes, and any interest and penalties thereon

**5 - JOINT REVOCABLE LIVING TRUST AGREEMENT**
(“death taxes” or “tax”) that become payable by reason of the death of a Settlor, whether in respect of property passing under this Agreement or otherwise, shall be paid as follows:

7.2.1 Taxes on Death of Deceased Settlor.

7.2.1.1 Apportionment of Taxes. Death taxes that become payable on the Deceased Settlor’s death shall be paid out of that part of the residue of the trust estate that is included in the Deceased Settlor’s gross estate for federal estate tax purposes without reimbursement from the recipients and without apportionment, except that:

7.2.1.1.1 Any tax on property over which the Deceased Settlor has a general power of appointment shall be recovered from the person receiving such property to the extent provided for in IRC § 2207 and § 2207A.

7.2.1.1.2 Any additional tax on special use valuation property under IRC § 2032A shall be paid by the “qualified heir” as provided therein.

7.2.1.1.3 Any tax on life insurance shall be recovered from the person receiving such property to the extent provided in IRC § 2206.

7.2.1.1.4 Any generation-skipping transfer tax shall be paid from the property constituting a generation-skipping transfer to the extent provided for in IRC § 2603.

7.2.1.2 Burden of Payment of Death Taxes. All death taxes payable out of part of the residue of the estate of the Deceased Settlor shall be charged against the following designated distributions or trust funds (if there is more than one such designation or trust fund at a level, the level shall abate ratably) so that taxes shall not be borne by or charged against the successively named distribution or trust fund until the entire amount of the immediately preceding distribution or trust fund has been exhausted:

7.2.1.2.1 Disclaimer Trust not subject to a state-only qualified terminable interest property (“QTIP”) election;

7.2.1.2.2 Disclaimer trust subject to a state-only QTIP election;

7.2.1.2.3 Charitable trust or distribution, if any;

7.2.1.2.4 Survivor’s trust or distribution, including QTIP trusts, if any. If an election is made to treat a portion of a QTIP trust as exempt from a generation-skipping transfer tax, the nonexempt portion of the QTIP trust shall be used first to pay such tax.
Chapter 3—Estate Tax: Alive and Well in Oregon

If death taxes are required to be apportioned or allocated in accordance with this Section 7.2.1, the Trustee may in the first instance pay such taxes out of that portion of this trust that is included in the Deceased Settlor’s gross estate for federal estate tax purposes. However, the Trustee may deduct the amount of such taxes apportioned or allocated to each beneficiary from the amount distributable to such beneficiary and shall recover from all others for the benefit of the trust their apportioned or allocable share.

7.2.2 Taxes on Death of Surviving Settlor.

[Below are choices on tax apportionment at the second death. These are not the only possibilities and the provision needs to be coordinated with the ultimate distributive plan.]

7.2.2.1 Apportionment of Taxes. Death taxes that become payable by reason of the death of the Surviving Settlor, whether in respect of property passing under this Agreement or otherwise, shall be apportioned according to Oregon law, including that any death taxes payable as a result of the inclusion of qualified terminable interest property (“QTIP”) shall be apportioned and collected from the QTIP as provided in IRC §2207A, whether the tax is federal or state.

7.2.2.2 Apportionment of Taxes. Death taxes that become payable by reason of the death of the Surviving Settlor with respect to property passing under this Agreement shall be paid out of the residue of the Survivor’s Trust established in Section 9.3 without reimbursement from the recipients and without apportionment. Such taxes on property passing outside of this Agreement shall be apportioned according to Oregon law, including that any death taxes payable as a result of the inclusion of qualified terminable interest property (“QTIP”) shall be apportioned and collected from the QTIP as provided in IRC § 2207A, whether the tax is federal or state.

7.2.2.3 Apportionment of Taxes. Death taxes that become payable by reason of the death of the Surviving Settlor, whether in respect of property passing under this Agreement or otherwise, shall be paid out of the residue of the Survivor’s Trust established in Section 9.3 without reimbursement from the recipients and without apportionment, except that:

7.2.2.3.1 Any tax on property over which the Surviving Settlor has a general power of appointment and tax on any “qualified terminable interest property” shall be recovered from the person receiving such property to the extent provided for in IRC § 2207 and § 2207A whether the tax is federal or state.

7.2.2.3.2 Any additional tax on special use valuation property under IRC § 2032A shall be paid by the “qualified heir.”

7 - JOINT REVOCABLE LIVING TRUST AGREEMENT
7.2.2.3.3 Any tax on life insurance included in the gross estate of the Surviving Settlor shall be recovered from the person receiving such property to the extent provided in IRC § 2206.

7.2.2.3.4 Any generation-skipping transfer tax shall be paid from the property constituting a generation-skipping transfer to the extent provided for in IRC § 2603.

7.2.2.4 Burden of Payment of Death Taxes. All death taxes payable out of the Survivor’s Trust shall be charged against the following designated distributions (if there is more than one designation at a level, the level shall abate ratably) so that taxes shall not be borne by or charged against the successively named distribution until the entire amount of the immediately preceding distribution has been exhausted:

7.2.2.4.1 Gift of the remainder of the residue (Section _____);

7.2.2.4.2 Specific distributions to individuals (ARTICLE 8);

If death taxes are required to be apportioned or allocated in accordance with this Section 7.2.2, the Trustee may in the first instance pay such taxes out of the Survivor’s Trust. However, the Trustee may deduct the amount of such taxes apportioned or allocated to each beneficiary from the amount distributable from the Survivor’s Trust to such beneficiary and shall recover from all others for the benefit of the trust their apportioned or allocable share.

7.2.3 Payment of Tax. Except as otherwise provided herein, if a Settlor leaves an estate subject to probate for which a Personal Representative shall be appointed, the Trustee upon reasonable notice may pay to the Personal Representative all or any part of any death taxes (and penalties and interest thereon) arising by reason of the death of the Settlor. On the Deceased Settlor’s death, all such payments shall be made out of that portion of this trust that is included in the Deceased Settlor’s gross estate for federal estate tax purposes. On the death of the Surviving Settlor, all such payments shall be made out of the Survivor’s Trust.

7.2.4 Charitable Remainder Trusts. Notwithstanding any of the above allocations of tax, no part of any death taxes shall be charged against any assets held in a charitable remainder trust created by either Settlor pursuant to IRC § 664.

7.3 Debts and Expenses.

7.3.1 Authority to Pay. The Trustee may pay just debts and claims, including income taxes and penalties and interest of a Settlor or of a Settlor’s estate and including funeral and burial expenses, if any, as soon as reasonably convenient (not
necessarily in the order stated), but the Trustee need not pay obligations not yet due and payable.

7.3.2 Payment. The Trustee may pay the obligations and liabilities directly or through the Personal Representative of a Settlor’s probate estate, if any. The Trustee may rely upon a written statement of the Personal Representative as to the amount of such claims, expenses, taxes, or other costs, and shall be under no duty to see to the application of any funds so paid.

7.3.3 Source of Payment. On the death of the Deceased Settlor, all such payments shall be made from that portion of this trust that is included in the Deceased Settlor’s gross estate for federal estate tax purposes. On the death of the Surviving Settlor, all such payments shall be made from the Survivor’s Trust.

ARTICLE 8
SPECIFIC DISTRIBUTIONS FROM TRUST

[Insert distribution of tangible personal property and other specific distributions.]

ARTICLE 9
DISPOSITION OF RESIDUE OF TRUST ESTATE

After the death of either Settlor, survived by the other Settlor, Trustee shall hold, manage, and dispose of the residue of the property in the trust estate (the “Residuary Trust”), including all additions to this trust and including accumulated but undistributed income of this trust, as follows:

9.1 Division of Residuary Trust. Upon the death of the Deceased Settlor, survived by the Surviving Settlor, the Trustee shall divide the Residuary Trust estate into shares in the following order of priority:

9.1.1 The Survivor’s Share. To the extent that the Surviving Settlor does not disclaim pursuant to Section 9.1.2, the Survivor’s Share shall consist of the then balance of the trust estate, and shall be held, administered, and distributed in accordance with the provisions of the Survivor’s Trust described in Section 9.3 below.

9.1.2 Disclaimer Provision. Any assets disclaimed by the Surviving Settlor as a beneficiary of the Survivor’s Trust shall be held, administered, and distributed in accordance with the provisions of the Disclaimer Trust described in Section 9.2 below. The Disclaimer Trust created by this document and the Trustee thereof shall have power to receive any property disclaimed by the Surviving Settlor, whether a part of the corpus of this original trust or not.

9 - JOINT REVOCABLE LIVING TRUST AGREEMENT
9.2 **Disclaimer Trust.** The Trustee shall hold, manage, and distribute the assets in the Disclaimer Trust according to the following terms and conditions:

9.2.1 **During Lifetime of Surviving Settlor.**

9.2.1.1 **Distributions.** The net income of the Disclaimer Trust shall be paid to or applied for the benefit of the Surviving Settlor in quarterly or more frequent installments during the lifetime of the Surviving Settlor. In addition, Trustee shall have the authority, in Trustee’s discretion, to pay to or apply on behalf of the Surviving Settlor such principal sums as Trustee may determine to be necessary for the health, maintenance, and support of the Surviving Settlor in order that the Surviving Settlor may maintain the standard of living to which he or she was accustomed at the time of the Deceased Settlor’s death.

9.2.1.2 **Trust Purpose During Surviving Settlor’s Lifetime.** The primary purpose of this trust is to provide the Surviving Settlor with the highest possible quality of life. The Trustee shall be liberal in making distributions to accomplish this purpose. The rights of other trust beneficiaries shall be secondary to the rights of the Surviving Settlor as a beneficiary.

9.2.1.3 **Residence.** If an interest in any residence is an asset of the trust estate, the Surviving Settlor shall be allowed to live in the residence rent free. The Surviving Settlor shall pay all taxes, utilities, hazard insurance premiums, and general costs of upkeep and repair. The Trustee shall pay for major repairs, such as the cost of structural repairs, a new roof, exterior painting, and replacement of a heating or air conditioning system. All such major repairs shall be charges against trust principal.

9.2.1.4 **QTIP Election.** Settlors request that the Personal Representative of the Deceased Settlor consider exercising the election under IRC § 2056 to qualify a portion of the Disclaimer Trust as a qualified terminable interest trust for marital deduction purposes (“QTIP Election”), if doing so might decrease the overall tax burden on the estates of Settlors. The Personal Representative of the Deceased Settlor may make a QTIP Election as to all or a fractional or percentage share of the Disclaimer Trust and, if allowed, solely for state purposes.

9.2.2 **Death of the Surviving Settlor.** After the death of the Surviving Settlor, the Trustee shall

[Add dispositive provisions for after the second death, but do not add a limited power of appointment. If any assets are disclaimed, then the limited power of appointment would also have to be disclaimed.]
9.3 Survivor’s Trust.

9.3.1 Funding and Amendment. The trust assets that are not includable in the Deceased Settlor’s gross estate for federal estate tax purposes shall be held in a continuing trust that shall be known as the Survivor’s Trust. As set forth in ARTICLE 5, the Surviving Settlor shall have the unrestricted right to amend or revoke the Survivor’s Trust and to withdraw all of the assets of the Survivor's Trust. The primary purpose of this trust is to provide the Surviving Settlor with the highest possible quality of life. The Trustee shall be liberal in making distributions to accomplish this purpose. The rights of other trust beneficiaries shall be secondary to the rights of the Surviving Settlor as a beneficiary.

9.3.2 Distributions. The Trustee shall pay to or on behalf of the Surviving Settlor such amounts of income or principal as the Surviving Settlor shall direct from time to time.

9.3.3 Incapacity of Surviving Settlor. In the event of the incapacity of the Surviving Settlor, the Trustee:

9.3.3.1 Distributions. Shall pay to or for the benefit of the Surviving Settlor such amounts of income or principal as the Trustee shall deem necessary or desirable for the support and health of the Surviving Settlor.

9.3.3.2 Gifts. May make gifts with a value not in excess of the annual exclusion amount pursuant to IRC Section 2503(b) or its successor provision to any of our lineal descendants or their spouses. In addition, may pay healthcare and education expenses for any of our lineal descendants or their spouses. May make other gifts to any person or charitable organization provided that the gifts to the person are consistent with the dispositive provisions of this trust and provided that the gifts to the charitable organization are to organizations to which a Settlor has contributed during any of the five calendar years immediately preceding the commencement of the Settlor’s incapacity. Any gift made by the Trustee may be considered an advancement, in the sole discretion of the Trustee. Trustee shall pay from the trust assets any gift tax that might arise by reason of any gift.

[See comment at Section 6.2.2.2.]

9.3.3.3 Limitations. The powers to make gifts in Section 9.3.3.2 are limited as follows: the Trustee may not make gifts to himself or herself, the Trustee’s estate, the Trustee’s creditors or the creditors of the Trustee’s estate, or to any person dependent upon the Trustee.

Limitations. The powers to make gifts in Section 9.3.3.2 are limited as follows: The Trustee may make gifts to himself or herself, Trustee’s spouse, or persons dependent upon
Trustee so long as such gifts do not exceed the sum of $5,000 in the aggregate during any calendar year. In no event is Trustee authorized or permitted to make any transfers pursuant to the above powers to the Trustee’s estate, the Trustee’s creditors, or the creditors of the Trustee’s estate.

**Limitations.** The powers to make gifts in Section 9.3.3.2 are limited as follows: Prior to making any transfers to Trustee, Trustee’s spouse, or any person dependent upon Trustee, Trustee shall first obtain the written consent of all adult members of the incapacitated Settlor’s family (other than Trustee) who would be entitled to more than a ten percent interest in the incapacitated Settlor’s estate (probate and nonprobate) if the incapacitated Settlor died immediately before the transfer was made. In no event is Trustee authorized or permitted to make any transfers pursuant to the above powers to the Trustee’s estate, the Trustee’s creditors, or the creditors of the Trustee’s estate.

9.3.4 Death of the Surviving Settlor. Upon the death of the Surviving Settlor, Trustee shall administer and distribute the remaining trust assets as provided in Section 9.2.2 Death of the Surviving Settlor to be held and distributed according to the terms of that section.

**ARTICLE 10**
**SURVIVORSHIP**

10.1 Settlors. If Settlors die simultaneously or under circumstances which render it difficult or impossible to determine who predeceased the other, or if Settlors die within 120 hours of each other, each Settlor shall be deemed to have survived the other, and the provisions of this Trust shall be construed and applied on the basis of that assumption.

10.2 Other Beneficiaries. If any beneficiary named or described in this Agreement (other than a Settlor) dies within 120 hours after the death of the Surviving Settlor, all of the provisions in this Agreement for the benefit of such deceased beneficiary shall lapse, and this Agreement shall be construed as though he or she died before the Surviving Settlor.

**ARTICLE 11**
**CONTINGENT BENEFICIARIES**

If in any circumstances not provided for in this Agreement there is any share of a trust for which there is no living beneficiary, the portion shall be distributed as follows: [Insert desired contingent beneficiary.]

**12 - JOINT REVOCABLE LIVING TRUST AGREEMENT**
ARTICLE 12
TRUSTEE PROVISIONS
[Insert desired provisions. Generally, the surviving spouse ought to be the trustee or there may be little incentive for the surviving spouse to disclaim and lose control.]

ARTICLE 13
LIFE INSURANCE

With respect to any life insurance policies owned by either Settlor that name the Trustee as a beneficiary of the policy, the Trustee shall collect and hold the proceeds of the policies under the terms of this Agreement. The payment to the Trustee by any insurance company of the proceeds of any such policy of insurance shall be a full discharge of the insurance company on account of the policy, and the insurance company shall in no way be responsible for the proper discharge of the trust or any part of the trust. The Trustee shall not be required to enter into collection proceedings or institute any litigation to enforce payment of the policies until reasonable provision has been made for indemnification of the Trustee against all expenses and liabilities related to such proceedings.

ARTICLE 14
TRUSTEE’S DUTIES AND POWERS
[Insert desired provision.]

ARTICLE 15
TAX ELECTIONS/DISCRETIONS

Trustee shall have full power and authority, in the Trustee’s absolute discretion:

15.1 Administration Expenses. To use administration expenses as deductions for death tax purposes or for income tax purposes; however, with respect to income otherwise payable to the Surviving Settlor or charity, the discretion hereunder shall be exercised by the Trustee only to the extent such allocation does not constitute a material limitation within the meaning of Regulation § 20.2056(b)-4(a) so as to cause a reduction in the amount allowable to a Settlor’s estate as an estate tax marital and/or charitable deduction.

15.2 Values. To use date-of-death values or alternate values for estate tax purposes.

15.3 Joint Income Tax Returns. To file with either Settlor, or the Personal Representative of either Settlor, joint income tax returns for the year in which a Settlor’s death occurs and for any previous year for which a return has not been filed.

13 - JOINT REVOCABLE LIVING TRUST AGREEMENT
15.4 **Split Gifts.** To consent for gift tax purposes to treat gifts made by either Settlor as if made one-half by each Settlor.

15.5 **Payment of Tax.** To pay in full, as a debt of the Settlor, any tax shown on any income tax return or gift tax return filed by a Settlor’s Personal Representative and any additional tax and interest that may be assessed as a result of the audit of any such return.

15.6 **GST Exemption.** To allocate all, some, or none of any unused portion of a Settlor’s generation-skipping tax exemption to any property (including unallocated lifetime transfers) and in any manner.

15.7 **QTIP Elections.** To make QTIP elections in whole or in part and to treat any qualified terminable interest property as if the Deceased Settlor, rather than the Surviving Settlor, is the generation-skipping transferor.

15.8 **S Corporation Elections.** To make any election under IRC § 1361 to enable an existing S corporation to maintain the status of an S corporation or to elect to treat any other corporation as an S corporation by holding S corporation stock in an eligible trust. Specifically, the Trustee is authorized to make the Electing Small Business Trust election under IRC § 1361(e)(3). The Trustee may also assist the beneficiaries of any trust created by this trust in making an election under IRC § 1361(d)(2) to qualify the trust as a Qualified Subchapter S Trust.

15.9 **65 Day Distributions.** To pay or credit any amount to any beneficiary within the first 65 days of any taxable year of the estate or trust, so that such amount shall be considered paid or credited on the last day of the preceding taxable year under IRC § 663.

15.10 **Apportioned Income Taxes.** To apportion to and deduct from the share of beneficiaries (exclusive of any charitable beneficiary) having an interest in income of this trust any income taxes imposed upon or chargeable to that income, in such equitable manner as Trustee shall determine.

15.11 **All Tax Elections.** To make any other election, allocation, or decision available under any federal or state tax laws. Any such election, allocation, or decision may be made regardless of the effect thereof on any of the interests passing under this Agreement and without adjustment between income and principal or among beneficiaries.

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**ARTICLE 16**

**MARITAL DEDUCTION PROVISIONS**

The following shall apply to provisions made in this Agreement for any interest qualifying for a marital deduction:

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**14 - JOINT REVOCABLE LIVING TRUST AGREEMENT**
16.1 Allocation of Property. To the extent possible, there shall not be allocated to any interest meant to qualify for a marital deduction:

16.1.1 Property Not Qualified for Marital Deduction. Any property or the proceeds of any property that would not qualify for the marital deduction.

16.1.2 Property Excluded from Gross Estate. Any annuity or other payment that is excluded from the Deceased Settlor’s gross estate for federal estate tax purposes.

16.1.3 Foreign Death Tax Credit. Any property or the proceeds of any property subject to foreign death taxes for which a credit is available, except to the extent that other qualified property is not available.

16.1.4 Section 303 Property. Any property or the proceeds of any property that may be redeemed for the payment of taxes, funeral expenses, and administration expenses under the provisions of IRC § 303, except to the extent that other qualified property is not available.

16.2 Unproductive Property. The Surviving Settlor may require that the Trustee of any trust that receives assets qualifying for a marital deduction not retain in such trust beyond a reasonable time any property that may be or become unproductive and may require that the Trustee not invest the assets of such trust in unproductive property.

16.3 Objective. The Settlors’ primary intent is that the portion of the Disclaimer Trust to which a state-only election that qualifies all or a portion of the Disclaimer Trust for a marital deduction applies, shall qualify for the federal or state estate tax marital deduction, as the case may be, and all provisions in this Agreement shall be interpreted consistently with that intent. All other provisions of this Agreement are subordinate to this intent and are to be so construed. Any ambiguities or apparent conflicts under any provisions of this Agreement, including any relating to the qualifications for the deduction, shall be resolved in favor of and consistent with Settlors’ primary intent as herein expressed. In addition, the rights, powers, and discretions of any fiduciary with respect to the administration of this trust shall not be exercised or exercisable except in a manner consistent with Settlors’ primary intent.

ARTICLE 17
QUALIFIED TERMINABLE INTEREST PROPERTY ELECTIONS

The following provisions shall apply to any trust eligible for treatment as a qualified terminable interest property (“QTIP”) trust under IRC § 2056(b)(7)(B) or any state law equivalent:

15 - JOINT REVOCABLE LIVING TRUST AGREEMENT
17.1 **QTIP Election.** The Personal Representative of the Deceased Settlor (which includes the Trustee, if no such Personal Representative is appointed) shall have absolute discretion to make a QTIP election with respect to all or any fractional share of the property passing to or included in any trust. Generally, we expect that the Personal Representative will make the election in order to minimize the estate taxes payable in the estate of the Deceased Settlor. However, in determining whether and to what extent to make the election, we also expect that consideration will be given to the available unified credit in the estate of the Deceased Settlor and to the potential estate tax payable in the estate of the Surviving Settlor, if the election is made. The determination of the Personal Representative with respect to making the election shall be binding and conclusive on all affected persons, and no equitable adjustment shall be required as a result of making or not making the election.

17.2 **Partial Election.** If a partial QTIP election is made, the election shall relate to a defined fraction or percentage of the property passing to or included in the trust. The trust may be divided into separate trusts to reflect the partial election. If such a division is made, the Trustee shall divide the assets of the trust according to the fair market value of the trust property at the time of the division. The separate trust as to which the election was made shall be known as an Elected Trust or any other appropriate name. After division both the elected and the non-elected trusts shall be administered and distributed in the same manner as that provided for the trust before division. To the extent practicable, we recommend that distributions of principal to the Surviving Settlor be made first from a separate Elected Trust. However, because the property of the divided trusts may be affected by changing conditions, the source of such payments shall be determined in the sole discretion of the Trustee.

17.3 **Reverse QTIP Election.** The Personal Representative and Trustee shall have absolute discretion to elect under IRC § 2652(a)(3) to treat any qualified terminable interest property as if the Deceased Settlor rather than the Surviving Settlor were the transferor for generation-skipping transfer tax purposes. This authority includes the power to divide any QTIP trust into two separate QTIP trusts in order to make a reverse QTIP election with respect to one of the trusts.

17.4 **Payment of Taxes and Costs of Administration.** Upon the death of the Surviving Settlor, the Trustee shall pay to the Personal Representative of the estate of the Surviving Settlor from the principal of any trust for which a QTIP election or any state law equivalent has been made, unless directed otherwise by the Surviving Settlor’s last Will, the following:

17.4.1 **Death Taxes.** An amount equal to all estate, inheritance, or other taxes including penalties and interest (death taxes) imposed by reason of the Surviving Settlor’s death, less the death taxes that would have been imposed if the QTIP property had
not been subject to such death taxes (QTIP property shall mean all property of this trust that is subject to death taxes imposed by reason of the Surviving Settlor’s death);

17.4.2 Direct Administration Expense. An amount equal to all administrative expenses incurred in the Surviving Settlor’s estate directly allocable to the QTIP property; and

17.4.3 Indirect Administration Expense. The amount that bears the same ratio to the administration expenses in the Surviving Settlor’s estate not directly allocable to the QTIP property as the value of the QTIP property bears to the value of all property subject to death tax in the Surviving Settlor’s estate.

To the extent practicable, we recommend that any such debts, taxes, or costs of administration be paid out of any trust or share of a trust for which a reverse QTIP election (as described in Section 17.3 above) has not been made.

ARTICLE 18
MISCELLANEOUS PROVISIONS

18.1 Incapacity.

18.1.1 Definition. For the purposes of this Agreement the term “incapacity” or “incapacitated” shall mean a person’s inability to manage his or her financial affairs, which for trustees includes financial affairs of the trust.

18.1.2 Determination. A Trustee or Successor-Trustee may determine the facts of a Settlor’s or a Trustee’s incapacity (whether by illness, age, or other cause, including disappearance) by any means deemed by the Trustee or Successor-Trustee to be adequate for such purposes. If the Trustee or Successor-Trustee acts in good faith in belief that a Settlor or Trustee is so incapacitated, the Trustee or Successor-Trustee shall not be liable for any acts or omissions by the Trustee or Successor-Trustee in reliance upon that belief.

18.2 Consideration of Other Support. In making discretionary distributions, the Trustee may, but shall not be required to, determine other sources of income, support, or property available to the beneficiary, and the Trustee shall have absolute discretion to determine the extent to which such other income, support, or property must first be utilized by the beneficiary.

18.3 Undistributed Income. Unless otherwise provided in this Agreement, income accrued, accumulated, or undistributed upon the termination of any interest under any trust shall pass to the beneficiary entitled to the next eventual interest. Any income that is not distributable shall be accumulated, added to, and thereafter administered as a part of the principal of the trust.
18.4 Segregation of Property Exempt from Generation-Skipping Tax. If an election is made to exempt any property from a generation-skipping transfer tax, and if any property in the trust is not exempt from generation-skipping tax, Trustee may divide any trust into two separate parts. The two parts shall represent two fractional shares of the property being divided and shall be held in separate trusts. One part shall be funded with property that is exempt, and the other part shall be funded with property that is not exempt. If Trustee separates the exempt property and the non-exempt property into separate trusts, then to the extent practicable Trustee shall make payment of principal as authorized from the non-exempt property in trust until that property has been consumed, but since the nonexempt property and the exempt property in trust will be affected by changing conditions, the decision as to the source of any such payments shall rest in the sole discretion of Trustee.

18.5 Spendthrift Protection. No beneficiary shall have any power, voluntarily or involuntarily, to sell, assign, transfer, encumber, or in any other manner anticipate or dispose of his or her interest in the trust or the income produced prior to its actual distribution by Trustee to said beneficiary or to another for the benefit of the beneficiary in the manner authorized by this Agreement. No beneficiary shall have any assignable interest in any trust created under this Agreement or in the income therefrom. Neither the principal nor the income shall be liable for the debts of any beneficiary. These limitations shall not restrict the exercise of any power of appointment or the right to disclaim.

18.6 Rule Against Perpetuities. Unless sooner terminated or vested in accordance with other provisions of this Agreement, all interests not otherwise vested, including but not limited to all trusts and powers of appointment created in this Agreement, shall terminate 90 years after the date of death of the Surviving Settlor at the end of which time distribution of all principal and all accrued, accumulated, and undistributed income shall be made to the persons then entitled to distributions of income and in the manner and proportions in this Agreement (or if not stated, equally) irrespective of their then-attained ages.

18.7 Severability. If any provision of a trust should be invalid or unenforceable, the remaining provisions shall continue to be fully effective.

18.8 Statutory References. Unless the context clearly requires another construction, each statutory reference in this Agreement shall be construed to refer to that statutory section mentioned, related successor sections, and corresponding provisions of any subsequent law, including all amendments.

18.9 Titles and Captions. The titles and captions used in this Agreement are for convenience of reference only and shall not be construed to have any legal effect.

18.10 Interpretation. Except as otherwise provided in this Agreement, the construction of this Agreement shall be determined according to Oregon law regardless of
the principal place of administration. Terms used in this Agreement and defined in ORS 111.005 have the same meaning, and “representation” has the same meaning as in ORS 112.065, as those statutes exist at the date of this Agreement. Persons conceived before a Settlor’s death and born alive thereafter shall be deemed to be living at a Settlor’s death. The terms “permissible distributee” and “qualified beneficiary” shall have the meaning provided in the Oregon Uniform Trust Code.

[You may want additional miscellaneous provisions.]

Duly executed in duplicate.

@1

@2

SETTLORS

Marion County, Oregon - ss:

On ________________, 2017 personally appeared @1 as Settlor and Trustee of THE # TRUST dated ________________, 2017 and acknowledged the foregoing instrument to be * voluntary act and deed.

Before me:

Notary Public for Oregon
My Commission Expires: ____________

Marion County, Oregon - ss:

On ________________, 2017 personally appeared @2 as Settlor and Trustee of THE # TRUST dated ________________, 2017 and acknowledged the foregoing instrument to be * voluntary act and deed.

Before me:

Notary Public for Oregon
My Commission Expires: ____________

19 - JOINT REVOCABLE LIVING TRUST AGREEMENT
SCHEDULE A

PROPERTY ATTRIBUTABLE TO BOTH SETTLORS

SCHEDULE B

PROPERTY ATTRIBUTABLE TO @1

SCHEDULE C

PROPERTY ATTRIBUTABLE TO @2

The foregoing schedules of trust property are a part of our Joint Revocable Living Trust Agreement with @3 and @4, Trustee, dated on this date.

Dated ______________________, 2017.

@1

@2

SETTLORS

ACCEPTED:

__________________________, 2017

@3

@4

TRUSTEE

20 - JOINT REVOCABLE LIVING TRUST AGREEMENT
IN THE MATTER OF THE TRUST ADMINISTRATION
OF _________________, DECEASED

DISCLAIMER BY _________________, INDIVIDUALLY

Pursuant to ORS 105.623 et seq., _________________ (the “Disclaimant”), disclaims a portion of his interest (defined below as the “Disclaimed Interest”) pursuant to Section 9.1 of THE ______________ TRUST under agreement dated ________________, in which ______________ were Settlors and Trustees (“Trust” or “Trust Agreement”).

The “Disclaimed Interest” is defined as the interest of the Disclaimant arising as the result of ______________’s death on ______________ in the following assets, which together shall constitute the “Disclaimed Interest”:

[List the assets to be disclaimed being careful to only include the portion that is includable in the decedent’s gross estate pursuant to the terms of the trust. If you use an Exhibit, be very sure it is attached and consider having the disclaimant sign the exhibit as well.]

Pursuant to the terms of the Trust, as a result of this disclaimer, the assets listed in this disclaimer will pass to the Disclaimer Trust. [The disclaimant cannot select to whom the disclaimed interest passes.]

This disclaimer includes all of the Disclaimant’s rights in the Disclaimed Interest, including his interests in income and principal with regard to the Disclaimed Interest, any right in the Disclaimed Interest accruing to the Disclaimant by intestacy or the will of the Decedent, and any right to income attributable to the Disclaimed Interest from the Decedent’s date of death, other than his rights as a beneficiary of the Disclaimer Trust.

This disclaimer is delivered in person to ______________ acting in his capacity as Trustee of the Trust within nine months of the date of death of the Decedent.

The Disclaimant has not:

1. Executed any written waiver of the right to disclaim;

2. Accepted any interest in the Disclaimed Interest or any benefit thereunder; and

1 - DISCLAIMER
10/12/17 BJS.dllForm to Disclaim for Broadbrush (00281186x9E696).docx
3. Made any assignment, conveyance, encumbrance, pledge, or transfer of his interest in the Disclaimed Interest, or a contract therefor.

The Disclaimant’s interest in the Disclaimed Interest has not been the subject of a judicial sale.

This disclaimer is irrevocable.

Duly executed this __________________________, _____.

____________________________________

Individually

[The notary is added to help verify the date a document is signed because of the nine-month disclaimer requirement. The notary is not required by federal or state law.]

Marion County, Oregon - ss.

On this _______ day of __________, ______, personally appeared ______________ and acknowledged the foregoing instrument to be his voluntary act and deed.

Before me:

Notary Public for Oregon
My commission expires:_____________
ACKNOWLEDGMENT OF RECEIPT OF DISCLAIMER

___________________, as Trustee of the trusts described in THE __________________ TRUST agreement dated ____________, acknowledges receipt of this disclaimer.

Dated __________________, ______.

___________________, as Trustee

___________________, as Trustee

Marion County, Oregon - ss.

On this _____ day of ____________, _____, personally appeared __________________, Trustee of trusts described in THE __________________ TRUST under agreement dated ____________, and acknowledged the foregoing instrument to be his voluntary act and deed.

Before me:

___________________
Notary Public for Oregon
My commission expires:__________
Chapter 4

Tax Collection Issues

SARAH LORA
Statewide Tax Clinic
Legal Aid Services of Oregon
Portland, Oregon

Contents

Presentation Slides .......................................................... 4–1
IRS Form 2848, Power of Attorney and Declaration of Representative .......................... 4–9
IRS Form 433-F, Collection Information Statement ................................................. 4–11
IRS Form 911, Request for Taxpayer Advocate Service Assistance (and Application for Taxpayer Assistance Order) ................................................................. 4–15
IRS Form 656 Booklet, Offer in Compromise ....................................................... 4–19
Oregon DOR Form 150-800-005, Tax Information Authorization and Power of Attorney for Representation .............................................................. 4–49
Oregon DOR Form OR-SFC (150-101-159), Statement of Financial Condition .......... 4–51
Oregon DOR Form OR-SOA (150-101-150), Settlement Offer Application ................. 4–59
TAX COLLECTION ISSUES

Sarah Lora, Supervising Attorney of the Statewide Tax Clinic
At Legal Aid Services of Oregon for
Broadbrush Taxation, 2017

ROADMAP

- Federal
  - Statute of Limitations – CSED (Collection Statute Expiration Date)
  - Currently Not Collectible
  - Offset Bypass Refund
  - Offer In Compromise
  - Installment Agreement
- State
  - Payment Plan
  - Garnishment Modification
  - Suspended Collection Status
  - Temporary Collection Hold
  - Settlement Agreement
STATUTE OF LIMITATIONS

- IRC § 6502 – the IRS generally has 10 years from date of assessment to collect the debt.
- Some collection alternatives toll the SOL
  - Requesting an IA or OIC, while the IRS (including Appeals) is considering it, and for 30 days after rejection suspends levy action and extends CSED (Collection Statute Expiration Date)
  - Requesting CDP hearing; collection suspended from date of request until notice of determination is issued or Tax Court decision becomes final

FEDERAL COLLECTION ALTERNATIVES

- Options options options!
  - Pay in Full.
  - Currently Not Collectible “CNC” – CI is suffering financial hardship.
  - Offer In Compromise “OIC” – CI’s reasonable collection potential (“RCP”) is less than the debt owed - the IRS may make a deal.
  - Installment Agreement “IA” – CI’s RCP is more than debt and there is no other alternative.
  - Bankruptcy.
CURRENTLY NOT COLLECTIBLE

- Temporary financial hardship. IRS may require updated financial statements every 12 months to stay in CNC status. IRS policy statement 5-71 gives authority.
- To obtain – gather cl's latest income and bank statements. 2 ways to obtain CNC
  - Call IRS Practitioner Priority Service – 1-866-860-4259 and explain cl's financial situation over the phone. No filing compliance needed – IRM 5.16.1.2.9 (12)
  - For immediate hardship cases. Submit Form 911, Collection Information Statement (433-F) and supporting docs to IRS Taxpayer Advocate Service (TAS).

CURRENTLY NOT COLLECTIBLE

- Pros
  - Get immediate relief from collection activities.
  - Does not toll CSED.
- Cons
  - Not a permanent solution for those who expect to get back on their feet.
  - Debt remains, interest continues to accrue.
  - IRS continues to offset future refunds to pay the back taxes (EXCEPT in extreme hardship situations TP can obtain "Offset Bypass Refund" by requesting through TAS)
OFFSET BYPASS REFUND

- TPs in CNC – future refunds are offset to pay debt.
- In an emergency TAS can make sure TP gets the refund.
- Examples of hardship:
  - Large family with 1 low wage job.
  - Large housing habitability expenses coming up.
  - Utility shut off/ Eviction notices
  - Unusual medical expenses
- Won’t work if other agencies would offset the refund
- Only available for current year.

OFFSET BYPASS

- HOW TO:
  - File tax return.
  - Immediately or within a few days, File 911 with cover letter detailing the sob story
  - Fax to TAS with copy of return.
OFFER IN COMPROMISE

- IRM 5.8.1.1.1: An offer in compromise (OIC) is an agreement between a taxpayer and the government that settles a tax liability for payment of less than the full amount owed.
- In Pub 656 - Form 433-A (OIC) – Calculates RCP ("Reasonable Collection Potential")
  - Consider ETA offer reducing RCP by assets that if liquidated would cause financial hardship.
- Low income clients do not pay fee or down payment. (See Form 656 attached)
- Is your client Ready?
  - 3 months paystubs and 3 months bank statements?
  - In filing compliance.
  - collection compliance for 5 years?
- Refund for tax year in which offer is filed AND accepted will be offset – NO hardship exceptions.
- IRS usually wants to forgive the debt. They will call you if you miss a question or need clarification on an issue. Perfectionism useful but not necessary.

OFFER IN COMPROMISE

- Doubt as to collectability: exists in any case where the taxpayer’s assets and income are less than the full amount of the liability. Treasury Reg 301.7122-1(b)(2):
  - Offer amount will be RCP
  - Doubt as to Collectibility with Special Circumstances is similar to ETA but TP cannot pay balance in full but wants to reduce RCP for hardship reasons.
- Doubt as to Liability – you get another bite at the apple.
  - Reviewed by exam, not collection.
  - No fee or 433 required.
- Effective Tax Administration
  - “The availability of an ETA offer encourages taxpayers to comply with the tax laws because taxpayers will believe the tax laws are fair and equitable.”
  - Only available if tax is legally owed and taxpayer could pay it in full.
  - Economic Hardship
  - Public Policy or Equity
INSTALLMENT AGREEMENT

- Allows you to pay off balance in 72 months
- Cost to enter into plan (As much as $225 down to about $43 for low income TPs.) Lower cost for direct debit.
- Good for people with too many assets and not enough hardship.
- Not good for people who qualify for any other collection alternative or who owe a low balance and can make payments on their own schedule.

STATE COLLECTION ALTERNATIVES

- The state rarely considers any hardship in any of their calculations.
- They are quick and aggressive.
- They don’t play around.
FINANCIAL STATEMENT

- Use Financial Statement form for payment plans, garnishment modifications, and Suspended Collection Status.
- Fill out every single square – empty box means rejected financial statement
  - Use N/A and $0 as needed.
- Attach 3 months’ bank statements and 3 months’ paystubs
- Attach proof of most other expenses, especially out of pocket medical, utilities, etc.
- Perfection and back up documents are key.

SETTLEMENT OFFERS

- Use settlement offer form from ODR website.
- Very similar to Financial Statement
- State does not consider hardship circumstances. They want almost ALL your assets and left over income. No exceptions.
- Requires 5% fee – applied to debt whether offer is accepted or not.
- May or may not receive communication from settlement offer agent (Shelby C.) if there is a problem with your offer.
- No appeal from denial. But can start again.
**IMPORTANT CONTACT INFO**

- Taxpayer Advocate Service – 503-265-3591; Fax: 503-227-5520
- IRS Practitioner Priority Line – 1-866-860-4259
- ODR personal income tax line – 503-945-8200 ext. 2
- ODR Settlement Offer contact – settlement.offer@oregon.gov
- Oregon Low Income Tax Clinics
  - Legal Aid Services of Oregon – 503-224-4086
  - Lewis & Clark – 503-768-6500
  - El Programa Hispano – 503-489-6854
Part I  Power of Attorney

1  Taxpayer information. Taxpayer must sign and date this form on page 2, line 7.

<table>
<thead>
<tr>
<th>Taxpayer name and address</th>
<th>Taxpayer identification number(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Daytime telephone number</td>
</tr>
</tbody>
</table>

hereby appoints the following representative(s) as attorney(s)-in-fact:

2  Representative(s) must sign and date this form on page 2, Part II.

<table>
<thead>
<tr>
<th>Name and address</th>
<th>CAF No.</th>
<th>PTIN</th>
<th>Telephone No.</th>
<th>Fax No.</th>
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</table>

Check if to be sent copies of notices and communications

<table>
<thead>
<tr>
<th>Name and address</th>
<th>CAF No.</th>
<th>PTIN</th>
<th>Telephone No.</th>
<th>Fax No.</th>
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</thead>
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</table>

Check if to be sent copies of notices and communications

<table>
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</table>

(Note: IRS sends notices and communications to only two representatives.)

<table>
<thead>
<tr>
<th>Name and address</th>
<th>CAF No.</th>
<th>PTIN</th>
<th>Telephone No.</th>
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</table>

Check if to be sent copies of notices and communications

<table>
<thead>
<tr>
<th>Name and address</th>
<th>CAF No.</th>
<th>PTIN</th>
<th>Telephone No.</th>
<th>Fax No.</th>
</tr>
</thead>
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</tbody>
</table>

(Note: IRS sends notices and communications to only two representatives.)

<table>
<thead>
<tr>
<th>Name and address</th>
<th>CAF No.</th>
<th>PTIN</th>
<th>Telephone No.</th>
<th>Fax No.</th>
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</thead>
<tbody>
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</table>

3  Acts authorized (you are required to complete this line 3). With the exception of the acts described in line 5b, I authorize my representative(s) to receive and inspect my confidential tax information and to perform acts that I can perform with respect to the tax matters described below. For example, my representative(s) shall have the authority to sign any agreements, consents, or similar documents (see instructions for line 5a for authorizing a representative to sign a return).

<table>
<thead>
<tr>
<th>Description of Matter</th>
<th>Tax Form Number</th>
<th>Year(s) or Period(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Income, Employment,</td>
<td>(1040, 941, 720,</td>
<td>(see instructions)</td>
</tr>
<tr>
<td>Payroll, Excise,</td>
<td>etc.) (if applicable)</td>
<td></td>
</tr>
<tr>
<td>Estate, Gift,</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Whistleblower,</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Practitioner Discipline</td>
<td></td>
<td></td>
</tr>
<tr>
<td>PLR, FOIA, Civil</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Penalty, Sec. 5000A</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Shared Responsibility Payment, Sec. 4980H Shared Responsibility Payment, etc. (see instructions)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

4  Specific use not recorded on Centralized Authorization File (CAF). If the power of attorney is for a specific use not recorded on CAF, check this box. See the instructions for Line 4. Specific Use Not Recorded on CAF.

5a  Additional acts authorized. In addition to the acts listed on line 3 above, I authorize my representative(s) to perform the following acts (see instructions for line 5a for more information):

- [ ] Authorize disclosure to third parties;
- [ ] Substitute or add representative(s);
- [ ] Sign a return;

Other acts authorized:

For Privacy Act and Paperwork Reduction Act Notice, see the instructions.
Chapter 4—Tax Collection Issues

Form 2848 (Rev. 12-2015)

b **Specific acts not authorized.** My representative(s) is (are) not authorized to endorse or otherwise negotiate any check (including directing or accepting payment by any means, electronic or otherwise, into an account owned or controlled by the representative(s) or any firm or other entity with whom the representative(s) is (are) associated) issued by the government in respect of a federal tax liability. List any other specific deletions to the acts otherwise authorized in this power of attorney (see instructions for line 5b):

6 **Retention/revocation of prior power(s) of attorney.** The filing of this power of attorney automatically revokes all earlier power(s) of attorney on file with the Internal Revenue Service for the same matters and years or periods covered by this document. If you do not want to revoke a prior power of attorney, check here

YOU MUST ATTACH A COPY OF ANY POWER OF ATTORNEY YOU WANT TO REMAIN IN EFFECT.

7 **Signature of taxpayer.** If a tax matter concerns a year in which a joint return was filed, each spouse must file a separate power of attorney even if they are appointing the same representative(s). If signed by a corporate officer, partner, guardian, tax matters partner, executor, receiver, administrator, or trustee on behalf of the taxpayer, I certify that I have the legal authority to execute this form on behalf of the taxpayer.

IF NOT COMPLETED, SIGNED, AND DATED, THE IRS WILL RETURN THIS POWER OF ATTORNEY TO THE TAXPAYER.

Part II Declaration of Representative

Under penalties of perjury, by my signature below I declare that:

- I am not currently suspended or disbarred from practice, or ineligible for practice, before the Internal Revenue Service;
- I am subject to regulations contained in Circular 230 (31 CFR, Subtitle A, Part 10), as amended, governing practice before the Internal Revenue Service;
- I am authorized to represent the taxpayer identified in Part I for the matter(s) specified there; and
- I am one of the following:
  - Attorney—a member in good standing of the bar of the highest court of the jurisdiction shown below.
  - Certified Public Accountant—licensed to practice as a certified public accountant is active in the jurisdiction shown below.
  - Enrolled Agent—enrolled as an agent by the Internal Revenue Service per the requirements of Circular 230.
  - Officer—a bona fide officer of the taxpayer organization.
  - Full-Time Employee—a full-time employee of the taxpayer.
  - Family Member—a member of the taxpayer’s immediate family (spouse, parent, child, grandparent, grandchild, step-parent, step-child, brother, or sister).
  - Enrolled Actuary—enrolled as an actuary by the Joint Board for the Enrollment of Actuaries under 29 U.S.C. 1242 (the authority to practice before the Internal Revenue Service is limited by section 10.3(d) of Circular 230).
  - Unenrolled Return Preparer—Authority to practice before the IRS is limited. An unenrolled return preparer may represent, provided the preparer (1) prepared and signed the return or claim for refund (or prepared if there is no signature space on the form); (2) was eligible to sign the return or claim for refund; (3) has a valid PTIN; and (4) possesses the required Annual Filing Season Program Record of Completion(s). See Special Rules and Requirements for Unenrolled Return Preparers in the instructions for additional information.
  - Student Attorney or CPA—receives permission to represent taxpayers before the IRS by virtue of his/her status as a law, business, or accounting student working in an LITC or STCP. See instructions for Part II for additional information and requirements.
  - Enrolled Retirement Plan Agent—enrolled as a retirement plan agent under the requirements of Circular 230 (the authority to practice before the Internal Revenue Service is limited by section 10.3(e)).

IF THIS DECLARATION OF REPRESENTATIVE IS NOT COMPLETED, SIGNED, AND DATED, THE IRS WILL RETURN THE POWER OF ATTORNEY. REPRESENTATIVES MUST SIGN IN THE ORDER LISTED IN PART I, LINE 2.

Note: For designations d-f, enter your title, position, or relationship to the taxpayer in the “Licensing jurisdiction” column.

<table>
<thead>
<tr>
<th>Designation—</th>
<th>Licensing jurisdiction (State) or other licensing authority (if applicable).</th>
<th>Bar, license, certification, registration, or enrollment number (if applicable).</th>
<th>Signature</th>
<th>Date</th>
</tr>
</thead>
<tbody>
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</tbody>
</table>

Form 2848 (Rev. 12-2015)
# Collection Information Statement

**Name(s) and Address**

<table>
<thead>
<tr>
<th>Name(s) and Address</th>
<th>Your Social Security Number or Individual Taxpayer Identification Number</th>
<th>Your Spouse’s Social Security Number or Individual Taxpayer Identification Number</th>
</tr>
</thead>
</table>

- If address provided above is different than last return filed, please check here.

**County of Residence**

<table>
<thead>
<tr>
<th>County of Residence</th>
<th>Your Telephone Numbers</th>
<th>Spouse’s Telephone Numbers</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Home:</td>
<td>Home:</td>
</tr>
<tr>
<td></td>
<td>Work:</td>
<td>Work:</td>
</tr>
<tr>
<td></td>
<td>Cell:</td>
<td>Cell:</td>
</tr>
</tbody>
</table>

**Enter the number of people in the household who can be claimed on this year’s tax return including you and your spouse.**

- Under 65
- 65 and Over

If you or your spouse are self employed or have self employment income, provide the following information:

<table>
<thead>
<tr>
<th>Name of Business</th>
<th>Business EIN</th>
<th>Type of Business</th>
<th>Number of Employees (not counting owner)</th>
</tr>
</thead>
</table>

**A. ACCOUNTS / LINES OF CREDIT** Include checking, online, mobile (e.g., PayPal) and savings accounts, Certificates of Deposit, Trusts, Individual Retirement Accounts (IRAs), Keogh Plans, Simplified Employee Pensions, 401(k) Plans, Profit Sharing Plans, Mutual Funds, Stocks, Bonds and other investments. If applicable, include business accounts. **(Use additional sheets if necessary.)**

<table>
<thead>
<tr>
<th>Name and Address of Institution</th>
<th>Account Number</th>
<th>Type of Account</th>
<th>Current Balance/Value</th>
<th>Check if Business Account</th>
</tr>
</thead>
<tbody>
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</tbody>
</table>

**B. REAL ESTATE** Include home, vacation property, timeshares, vacant land and other real estate. **(Use additional sheets if necessary.)**

<table>
<thead>
<tr>
<th>Description/Location/County</th>
<th>Monthly Payment(s)</th>
<th>Financing</th>
<th>Year Purchased</th>
<th>Purchase Price</th>
<th>Current Value</th>
<th>Balance Owed</th>
<th>Equity</th>
</tr>
</thead>
<tbody>
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</table>

**C. OTHER ASSETS** Include cars, boats, recreational vehicles, whole life policies, etc. Include make, model and year of vehicles and name of Life Insurance company in Description. If applicable, include business assets such as tools, equipment, inventory, etc. **(Use additional sheets if necessary.)**

<table>
<thead>
<tr>
<th>Description</th>
<th>Monthly Payment</th>
<th>Year Purchased</th>
<th>Final Payment (mo/yr)</th>
<th>Current Value</th>
<th>Balance Owed</th>
<th>Equity</th>
</tr>
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<tbody>
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</tbody>
</table>

**D. CREDIT CARDS** **(Visa, MasterCard, American Express, Department Stores, etc.)**

<table>
<thead>
<tr>
<th>Type</th>
<th>Credit Limit</th>
<th>Balance Owed</th>
<th>Minimum Monthly Payment</th>
</tr>
</thead>
<tbody>
<tr>
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**TURN PAGE TO CONTINUE**
Chapter 4—Tax Collection Issues

E. BUSINESS INFORMATION
Complete E1 for Accounts Receivable owed to you or your business. (Use additional sheets if necessary.)
Complete E2 if you or your business accepts credit card payments.

E1. Accounts Receivable owed to you or your business

<table>
<thead>
<tr>
<th>Name</th>
<th>Address</th>
<th>Amount Owed</th>
</tr>
</thead>
<tbody>
<tr>
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</tbody>
</table>

List total amount owed from additional sheets
Total amount of accounts receivable available to pay to IRS now

E2. Name of individual or business on account

<table>
<thead>
<tr>
<th>Credit Card (Visa, Master Card, etc.)</th>
<th>Issuing Bank Name and Address</th>
<th>Merchant Account Number</th>
</tr>
</thead>
<tbody>
<tr>
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</tbody>
</table>

F. EMPLOYMENT INFORMATION
If you have more than one employer, include the information on another sheet of paper. (If attaching a copy of current pay stub, you do not need to complete this section.)

Your current Employer (name and address)  Spouse’s current Employer (name and address)

How often are you paid? (Check one)
- Weekly
- Biweekly
- Semi-monthly
- Monthly

Gross per pay period

Taxes per pay period (Fed) (State) (Local)
How long at current employer

G. NON-WAGE HOUSEHOLD INCOME
List monthly amounts. For Self-Employment and Rental Income, list the monthly amount received after expenses or taxes and attach a copy of your current year profit and loss statement.

<table>
<thead>
<tr>
<th>Alimony Income</th>
<th>Net Rental Income</th>
<th>Interest/Dividends Income</th>
<th>Social Security Income</th>
<th>Other:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</tbody>
</table>

H. MONTHLY NECESSARY LIVING EXPENSES
List monthly amounts. (For expenses paid other than monthly, see instructions.)

1. Food / Personal Care
See instructions. If you do not spend more than the standard allowable amount for your family size, fill in the Total amount only.

<table>
<thead>
<tr>
<th>Food</th>
<th>Actual Monthly Expenses</th>
<th>IRS Allowed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Housekeeping Supplies</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Clothing and Clothing Services</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Personal Care Products &amp; Services</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Miscellaneous</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Total

2. Transportation

<table>
<thead>
<tr>
<th>Gas / Insurance / Licenses / Parking / Maintenance etc.</th>
<th>Actual Monthly Expenses</th>
<th>IRS Allowed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public Transportation</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Total

3. Housing & Utilities

<table>
<thead>
<tr>
<th>Rent</th>
<th>Actual Monthly Expenses</th>
<th>IRS Allowed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Electric, Oil/Gas, Water/Trash</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Telephone/Cell/Cable/Internet</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Real Estate Taxes and Insurance (if not included in B above)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Maintenance and Repairs</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Total

4. Medical

<table>
<thead>
<tr>
<th>Health Insurance</th>
<th>Actual Monthly Expenses</th>
<th>IRS Allowed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Out of Pocket Health Care Expenses</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Total

5. Other

<table>
<thead>
<tr>
<th>Child / Dependent Care</th>
<th>Actual Monthly Expenses</th>
<th>IRS Allowed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Estimated Tax Payments</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Retirement (Employer Required)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Retirement (Voluntary)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Union Dues</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Delinquent State &amp; Local Taxes (minimum payment)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Student Loans (minimum payment)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Court Ordered Child Support</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Court Ordered Alimony</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other Court Ordered Payments</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other (specify)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other (specify)</td>
<td></td>
<td></td>
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<tr>
<td>Other (specify)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Total

Under penalty of perjury, I declare to the best of my knowledge and belief this statement of assets, liabilities and other information is true, correct and complete.

Your Signature  Spouse’s Signature  Date

Chapter 4—Tax Collection Issues

Instructions for Form 433-F, Collection Information Statement

What is the purpose of Form 433F?

Form 433-F is used to obtain current financial information necessary for determining how a wage earner or self-employed individual can satisfy an outstanding tax liability.

Note: You may be able to establish an Online Payment Agreement on the IRS web site. To apply online, go to https://www.irs.gov, click on “I need to pay my taxes,” and select “Installment Agreement” under the heading “What if I can't pay now?”

If you are requesting an Installment Agreement, you should submit Form 9465, Installment Agreement Request, along with Form 433-F. (A large down payment may streamline the installment agreement process, pay your balance faster and reduce the amount of penalties and interest.

Please retain a copy of your completed form and supporting documentation. After we review your completed form, we may ask you to send supporting documentation of your current income or substantiation of your stated expenditures.

If any section on this form is too small for the information you need to supply, please use a separate sheet.

Section A – Accounts / Lines of Credit

List all accounts, even if they currently have no balance. However, do not enter bank loans in this section. Include business accounts, if applicable. If you are entering information for a stock or bond, etc. and a question does not apply, enter N/A.

Section B – Real Estate

List all real estate you own or are purchasing including your home. Include insurance and taxes if they are included in your monthly payment. The county/description is needed if different than the address and county you listed above. To determine equity, subtract the amount owed for each piece of real estate from its current market value.

Section C – Other Assets

List all cars, boats and recreational vehicles with their make, model and year. If a vehicle is leased, write “lease” in the “year purchased” column. List whole life insurance policies with the name of the insurance company. List other assets with a description such as “paintings”, “coin collection”, or “antiques”. If applicable, include business assets, such as tools, equipment, inventory, and intangible assets such as domain names, patents, copyrights, etc. To determine equity, subtract the amount owed from its current market value. If you are entering information for an asset and a question does not apply, enter N/A.

Section D – Credit Cards

List all credit cards and lines of credit, even if there is no balance owed.

Section E – Business Information

Complete this section if you or your spouse are self-employed, or have self-employment income. This includes self-employment income from online sales.

E1: List all Accounts Receivable owed to you or your business. Include federal, state and local grants and contracts.

E2: Complete if you or your business accepts credit card payments (e.g., Visa, MasterCard, etc.).

Section F – Employment Information

Complete this section if you or your spouse are wage earners.

If attaching a copy of current pay stub, you do not need to complete this section.

Section G – Non-Wage Household Income

List all non-wage income received monthly.

Net Self-Employment Income is the amount you or your spouse earns after you pay ordinary and necessary monthly business expenses. This figure should relate to the yearly net profit from Schedule C on your Form 1040 or your current year profit and loss statement. Please attach a copy of Schedule C or your current year profit and loss statement. If net income is a loss, enter “0”.

Net Rental Income is the amount you earn after you pay ordinary and necessary monthly rental expenses. This figure should relate to the amount reported on Schedule E of your Form 1040.

Do not include depreciation expenses. Depreciation is a non-cash expense. Only cash expenses are used to determine ability to pay.

If net rental income is a loss, enter “0”.

Other Income includes distributions from partnerships and subchapter S corporations reported on Schedule K-1, and from limited liability companies reported on Form 1040, Schedule C, D or E. It also includes agricultural subsidies, gambling income, oil credits, and rent subsidies. Enter total distributions from IRAs if not included under Pension Income.

Section H – Monthly Necessary Living Expenses

Enter monthly amounts for expenses. For any expenses not paid monthly, convert as follows:

<table>
<thead>
<tr>
<th>If a bill is paid ...</th>
<th>Calculate the monthly amount by ...</th>
</tr>
</thead>
<tbody>
<tr>
<td>Quarterly</td>
<td>Dividing by 3</td>
</tr>
<tr>
<td>Weekly</td>
<td>Multiplying by 4.3</td>
</tr>
<tr>
<td>Biweekly (every two weeks)</td>
<td>Multiplying by 2.17</td>
</tr>
<tr>
<td>Semimonthly (twice each month)</td>
<td>Multiplying by 2</td>
</tr>
</tbody>
</table>
For expenses claimed in boxes 1 and 4, you should provide the IRS allowable standards, or the actual amount you pay if the amount exceeds the IRS allowable standards. IRS allowable standards can be found by accessing https://www.irs.gov/businesses/small-businesses-self-employed/collection-financial-standards.

Substantiation may be required for any expenses over the standard once the financial analysis is completed.

The amount claimed for Miscellaneous cannot exceed the standard amount for the number of people in your family. The miscellaneous allowance is for expenses incurred that are not included in any other allowable living expense items. Examples are credit card payments, bank fees and charges, reading material and school supplies.

If you do not have access to the IRS web site, itemize your actual expenses and we will ask you for additional proof, if required. Documentation may include pay statements, bank and investment statements, loan statements and bills for recurring expenses, etc.

**Housing and Utilities** — Includes expenses for your primary residence. You should only list amounts for utilities, taxes and insurance that are not included in your mortgage or rent payments.

**Rent** — Do not enter mortgage payment here. Mortgage payment is listed in Section B.

**Transportation** — Include the total of maintenance, repairs, insurance, fuel, registrations, licenses, inspections, parking, and tolls for one month.

**Public Transportation** — Include the total you spend for public transportation if you do not own a vehicle or if you have public transportation costs in addition to vehicle expenses.

**Medical** — You are allowed expenses for health insurance and out-of-pocket health care costs.

**Health insurance** — Enter the monthly amount you pay for yourself or your family.

**Out-of-Pocket health care expenses** — are costs not covered by health insurance, and include:

- Medical services
- Prescription drugs
- Dental expenses
- Medical supplies, including eyeglasses and contact lenses. Medical procedures of a purely cosmetic nature, such as plastic surgery or elective dental work are generally not allowed.

**Child / Dependent Care** — Enter the monthly amount you pay for the care of dependents that can be claimed on your Form 1040.

**Estimated Tax Payments** — Calculate the monthly amount you pay for estimated taxes by dividing the quarterly amount due on your Form 1040ES by 3.

**Life Insurance** — Enter the amount you pay for term life insurance only. Whole life insurance has cash value and should be listed in Section C.

**Delinquent State & Local Taxes** — Enter the minimum amount you are required to pay monthly. Be prepared to provide a copy of the statement showing the amount you owe and if applicable, any agreement you have for monthly payments.

**Student Loans** — Minimum payments on student loans for the taxpayer’s post-secondary education may be allowed if they are guaranteed by the federal government. Be prepared to provide proof of loan balance and payments.

**Court Ordered Payments** — For any court ordered payments, be prepared to submit a copy of the court order portion showing the amount you are ordered to pay, the signatures, and proof you are making the payments. Acceptable forms of proof are copies of cancelled checks or copies of bank or pay statements.

**Other Expenses not listed above** — We may allow other expenses in certain circumstances. For example, if the expenses are necessary for the health and welfare of the taxpayer or family, or for the production of income. Specify the expense and list the minimum monthly payment you are billed.
### Section I – Taxpayer Information

<table>
<thead>
<tr>
<th>1a. Your name as shown on tax return</th>
<th>1b. Taxpayer Identifying Number (SSN, ITIN, EIN)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2a. Spouse's name as shown on tax return (if applicable)</td>
<td>2b. Spouse's Taxpayer Identifying Number (SSN, ITIN)</td>
</tr>
<tr>
<td>3a. Your current street address (Number, Street, &amp; Apt. Number)</td>
<td></td>
</tr>
<tr>
<td>3b. City</td>
<td>3c. State (or Foreign Country)</td>
</tr>
<tr>
<td>3d. ZIP code</td>
<td></td>
</tr>
<tr>
<td>4. Fax number (if applicable)</td>
<td>5. Email address</td>
</tr>
<tr>
<td>6. Tax form number (1040, 941, 720, etc.)</td>
<td>7. Tax year(s) or period(s)</td>
</tr>
<tr>
<td>8. Person to contact if Section II is not being used</td>
<td>9a. Daytime phone number</td>
</tr>
<tr>
<td>9b. Check here if you consent to have confidential information about your tax issue left on your answering machine or voice message at this number.</td>
<td></td>
</tr>
<tr>
<td>10. Best time to call</td>
<td></td>
</tr>
<tr>
<td>11. Preferred language (if applicable)</td>
<td></td>
</tr>
<tr>
<td>TTY/TDD Line</td>
<td>Interpreter needed - Specify language other than English (including sign language)</td>
</tr>
<tr>
<td>Other (please specify)</td>
<td></td>
</tr>
<tr>
<td>12a. Please describe the tax issue you are experiencing and any difficulties it may be creating</td>
<td>12b. Please describe the relief/assistance you are requesting</td>
</tr>
<tr>
<td>(If more space is needed, attach additional sheets.)</td>
<td>(If more space is needed, attach additional sheets.)</td>
</tr>
</tbody>
</table>

I understand that Taxpayer Advocate Service employees may contact third parties in order to respond to this request and I authorize such contacts to be made. Further, by authorizing the Taxpayer Advocate Service to contact third parties, I understand that I will not receive notice, pursuant to section 7602(c) of the Internal Revenue Code, of third parties contacted in connection with this request.

| 13a. Signature of Taxpayer or Corporate Officer, and title, if applicable | 13b. Date signed |
| 14a. Signature of spouse | 14b. Date signed |

### Section II – Representative Information

<table>
<thead>
<tr>
<th>1. Name of authorized representative</th>
<th>2. Centralized Authorization File (CAF) number</th>
</tr>
</thead>
<tbody>
<tr>
<td>3. Current mailing address</td>
<td>4. Daytime phone number</td>
</tr>
<tr>
<td>5. Fax number</td>
<td>6. Signature of representative</td>
</tr>
<tr>
<td>7. Date signed</td>
<td></td>
</tr>
</tbody>
</table>

Catalog Number 16965S www.irs.gov Form 911 (Rev. 2-2015)
### Section III – Initiating Employee Information *(Section III is to be completed by the IRS only)*

<table>
<thead>
<tr>
<th>Taxpayer name</th>
<th>Taxpayer Identifying Number (TIN)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Name of employee</td>
<td>2. Phone number</td>
</tr>
</tbody>
</table>

5. How identified and received *(Check the appropriate box)*
- IRS Function identified issue as meeting Taxpayer Advocate Service (TAS) criteria
  - (r) Functional referral (Function identified taxpayer issue as meeting TAS criteria).
  - (x) Congressional correspondence/inquiry not addressed to TAS but referred for TAS handling.
  - Name of Senator/Representative

- Taxpayer or Representative requested TAS assistance
  - (n) Taxpayer or representative called into a National Taxpayer Advocate (NTA) Toll-Free site.
  - (s) Functional referral (taxpayer or representative specifically requested TAS assistance).

6. IRS received date

7. TAS criteria *(Check the appropriate box. NOTE: Checkbox 9 is for TAS Use Only)*
   - (1) The taxpayer is experiencing economic harm or is about to suffer economic harm.
   - (2) The taxpayer is facing an immediate threat of adverse action.
   - (3) The taxpayer will incur significant costs if relief is not granted (including fees for professional representation).
   - (4) The taxpayer will suffer irreparable injury or long-term adverse impact if relief is not granted.
   - (if any items 1-4 are checked, complete Question 9 below)
   - (5) The taxpayer has experienced a delay of more than 30 days to resolve a tax account problem.
   - (6) The taxpayer did not receive a response or resolution to their problem or inquiry by the date promised.
   - (7) A system or procedure has either failed to operate as intended, or failed to resolve the taxpayer's problem or dispute within the IRS.
   - (8) The manner in which the tax laws are being administered raise considerations of equity, or have impaired or will impair the taxpayer's rights.
   - (9) The NTA determines compelling public policy warrants assistance to an individual or group of taxpayers *(TAS Use Only)*

8. What action(s) did you take to help resolve the issue? *(This block MUST be completed by the initiating employee)*
   If you were unable to resolve the issue, state the reason why *(if applicable)*

9. Provide a description of the Taxpayer's situation, and where appropriate, explain the circumstances that are creating the economic burden and how the Taxpayer could be adversely affected if the requested assistance is not provided *(This block MUST be completed by the initiating employee)*

10. How did the taxpayer learn about the Taxpayer Advocate Service
- IRS Forms or Publications
- Media
- IRS Employee
- Other *(please specify)*
Instructions for completing Form 911 (Rev. 5-2011)

Form 911 Filing Requirements

When to Use this Form: The Taxpayer Advocate Service (TAS) is your voice at the IRS. TAS may be able to help you if you're experiencing a problem with the IRS and:

• Your problem with the IRS is causing financial difficulties for you, your family or your business;
• You face (or you business is facing) an immediate threat of adverse action; or
• You have tried repeatedly to contact the IRS, but no one has responded, or the IRS has not responded by the date promised.

If an IRS office will not give you the help you've asked for or will not help you in time to avoid harm, you may submit this form. The Taxpayer Advocate Service will generally ask the IRS to stop certain activities while your request for assistance is pending (for example, lien filings, levies, and seizures).

Where to Send this Form:

• The quickest method is Fax. TAS has at least one office in every state, the District of Columbia, and Puerto Rico. Submit this request to the Taxpayer Advocate office in the state or city where you reside. You can find the fax number in the government listings in your local telephone directory, on our website at www.irs.gov/advocate, or in Publication 1546, Taxpayer Advocate Service - Your Voice at the IRS.

• You also can mail this form. You can find the mailing address and phone number (voice) of your local Taxpayer Advocate office in your phone book, on our website, and in Pub. 1546, or get this information by calling our toll-free number: 1-877-777-4778.

• Are you sending the form from overseas? Fax it to 1-855-818-5697 or mail it to: Taxpayer Advocate Service, Internal Revenue Service, PO Box 11996, San Juan, Puerto Rico 00922.

• Please be sure to fill out the form completely and submit it to the Taxpayer Advocate office nearest you so we can work your issue as soon as possible.

What Happens Next?

If you do not hear from us within one week of submitting Form 911, please call the TAS office where you sent your request. You can find the number at www.irs.gov/advocate.

Important Notes: Please be aware that by submitting this form, you are authorizing the Taxpayer Advocate Service to contact third parties as necessary to respond to your request, and you may not receive further notice about these contacts. For more information see IRC 7602(c).

Caution: The Taxpayer Advocate Service will not consider frivolous arguments raised on this form. You can find examples of frivolous arguments in Publication 2105, Why do I have to Pay Taxes? If you use this form to raise frivolous arguments, you may be subject to a penalty of $5,000.

Paperwork Reduction Act Notice: We ask for the information on this form to carry out the Internal Revenue laws of the United States. Your response is voluntary. You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by Code section 6103. Although the time needed to complete this form may vary depending on individual circumstances, the estimated average time is 30 minutes.

Should you have comments concerning the accuracy of this time estimate or suggestions for making this form simpler, please write to: Internal Revenue Service, Tax Products Coordinating Committee, Room 6406, 1111 Constitution Ave. NW, Washington, DC 20224.

Instructions for Section I

1a. Enter your name as shown on the tax return that relates to this request for assistance.

1b. Enter your Taxpayer Identifying Number. If you are an individual this will be either a Social Security Number (SSN) or Individual Taxpayer Identification Number (ITIN). If you are a business entity this will be your Employer Identification Number (EIN) (e.g. a partnership, corporation, trust or self-employed individual with employees).

2a. Enter your spouse's name (if applicable) if this request relates to a jointly filed return.

2b. Enter your spouse's Taxpayer Identifying Number (SSN or ITIN) if this request relates to a jointly filed return.

3a-d. Enter your current mailing address, including street number and name, city, state, or foreign country, and zip code.

4. Enter your fax number, including the area code.

5. Enter your e-mail address. We will only use this to contact you if we are unable to reach you by telephone and your issue appears to be time sensitive. We will not, however, use your e-mail address to discuss the specifics of your case.

6. Enter the number of the Federal tax return or form that relates to this request. For example, an individual taxpayer with an income tax issue would enter Form 1040.

7. Enter the quarterly, annual, or other tax year or period that relates to this request. For example, if this request involves an income tax issue, enter the calendar or fiscal year, if an employment tax issue, enter the calendar quarter.


Chapter 4—Tax Collection Issues

Instructions for Section I - (Continued from Page 3)

8. Enter the name of the individual we should contact if Section II is not being used. For partnerships, corporations, trusts, etc., enter the name of the individual authorized to act on the entity's behalf. If the contact person is not the taxpayer or other authorized individual, please see the Instructions for Section II.

9a. Enter your daytime telephone number, including the area code. If this is a cell phone number, please check the box.

9b. If you have an answering machine or voice mail at this number and you consent to the Taxpayer Advocate Service leaving confidential information about your tax issue at this number, please check the box. You are not obligated to have information about your tax issue left at this number. If other individuals have access to the answering machine or the voice mail and you do not wish for them to receive any confidential information about your tax issue, please do not check the box.

10. Indicate the best time to call you. Please specify A.M. or P.M. hours.

11. Indicate any special communication needs you require (such as sign language). Specify any language other than English.

12a. Please describe the tax issue you are experiencing and any difficulties it may be creating. Specify the actions that the IRS has taken (or not taken) to resolve the issue. If the issue involves an IRS delay of more than 30 days in resolving your issue, indicate the date you first contacted the IRS for assistance in resolving your issue. See Section III for a specific list of TAS criteria.

12b. Please describe the relief/assistance you are requesting. Specify the action that you want taken and that you believe necessary to resolve the issue. Furnish any documentation that you believe would assist us in resolving the issue.

13-14. If this is a joint assistance request, both spouses must sign in the appropriate blocks and enter the date the request was signed. If only one spouse is requesting assistance, only the requesting spouse must sign the request. If this request is being submitted for another individual, only a person authorized and empowered to act on that individual's behalf should sign the request.

Requests for corporations must be signed by an officer and include the officer's title.

Note: The signing of this request allows the IRS by law to suspend any applicable statutory periods of limitation relating to the assessment or collection of taxes. However, it does not suspend any applicable periods for you to perform acts related to assessment or collection, such as petitioning the Tax Court for redetermination of a deficiency or requesting a Collection Due Process hearing.

Instructions for Section II

Taxpayers: If you wish to have a representative act on your behalf, you must give him/her power of attorney or tax information authorization for the tax return(s) and period(s) involved. For additional information see Form 2848, Power of Attorney and Declaration of Representative, or Form 8821, Tax Information Authorization, and the accompanying instructions. Information can also be found in Publication 1546, Taxpayer Advocate Service—Your Voice at the IRS.

Representatives: If you are an authorized representative submitting this request on behalf of the taxpayer identified in Section I, complete Blocks 1 through 7 of Section II. Attach a copy of Form 2848, Form 8821, or other power of attorney. Enter your Centralized Authorization File (CAF) number in Block 2 of Section II. The CAF number is the unique number that the IRS assigns to a representative after Form 2848 or Form 8821 is filed with an IRS office.

Note: Form 8821 does not authorize your appointee to advocate your position with respect to the Federal tax laws; to execute waivers, consents, or closing agreements; or to otherwise represent you before the IRS. Form 8821 does authorize anyone you designate to inspect and/or receive your confidential tax information in any office of the IRS, for the type of tax and tax periods you list on Form 8821.

Instructions for Section III (For IRS Use Only) Please complete this section in its entirety.

Enter the taxpayer's name and taxpayer identification number from the first page of this form.

1. Enter your name.

2. Enter your phone number.

3a. Enter your Function (e.g., ACS, Collection, Examination, Customer Service, etc.).

3b. Enter your Operating Division (W&I, SB/SE, LS&I, or TE/GE).

4. Enter the Organization code number for your office (e.g., 18 for AUSC, 95 for Los Angeles).

5. Check the appropriate box that best reflects how the need for TAS assistance was identified. For example, did taxpayer or representative call or write to an IRS function or the Taxpayer Advocate Service (TAS).

6. Enter the date the taxpayer or representative called or visited an IRS office to request TAS assistance. Or enter the date when the IRS received the Congressional correspondence/inquiry or a written request for TAS assistance from the taxpayer or representative. If the IRS identified the taxpayer's issue as meeting TAS criteria, enter the date this determination was made.

7. Check the box that best describes the reason TAS assistance is requested. Box 9 is for TAS Use Only.

8. State the action(s) you took to help resolve the taxpayer's issue. State the reason(s) that prevented you from resolving the taxpayer's issue. For example, levy proceeds cannot be returned because they were already applied to a valid liability; an overpayment cannot be refunded because the statutory period for issuing a refund expired; or current law precludes a specific interest abatement.

9. Provide a description of the taxpayer's situation, and where appropriate, explain the circumstances that are creating the economic burden and how the taxpayer could be adversely affected if the requested assistance is not provided.

10. Ask the taxpayer how he or she learned about the Taxpayer Advocate Service and indicate the response here.
Form 656 Booklet

Offer in Compromise

CONTENTS

- What you need to know ................................................................. 1
- Paying for your offer ........................................................................ 3
- How to apply .................................................................................... 3
- Completing the application package .............................................. 4
- Important information ..................................................................... 5
- Removable Forms - Form 433-A (OIC), Collection Information Statement for Wage Earners and Self-Employed; Form 433-B (OIC), Collection Information Statement for Businesses; Form 656, Offer in Compromise .... 7
- Application Checklist ...................................................................... 27

IRS contact information

If you want to see if you qualify for an offer before filling out the paperwork, you may use the Offer in Compromise Pre-Qualifier tool. The questionnaire format assists in gathering the information needed and provides instant feedback as to your eligibility based on the information you provided. The tool will also assist you in determining a preliminary offer amount for consideration of an acceptable offer. The Pre-Qualifier tool is located on our website at www.irs.gov.

If you have questions regarding qualifications for an offer in compromise, please call our toll-free number at 1-800-829-1040. You can get forms and publications by calling 1-800-TAX-FORM (1-800-829-3676), by visiting your local IRS office, or at www.irs.gov.

Taxpayer resources

The Taxpayer Advocate Service (TAS) is an independent organization within the Internal Revenue Service that helps taxpayers and protects taxpayer rights. We help taxpayers whose problems with the IRS are causing financial difficulties, who've tried but haven't been able to resolve their problems with the IRS, or believe an IRS system or procedure isn't working as it should. And the service is free. Your local advocate's number is in your local directory and at taxpayeradvocate.irs.gov. You can also call us at 1-877-777-4778. For more information about TAS and your rights under the Taxpayer Bill of Rights, go to taxpayeradvocate.irs.gov. TAS is your voice at the IRS.

Low Income Taxpayer Clinics (LITCs) are independent from the IRS. LITCs serve individuals whose income is below a certain level and who need to resolve a tax problem with the IRS. LITCs provide professional representation before the IRS or in court on audits, appeals, tax collection disputes, and other issues for free or for a small fee. For more information and to find an LITC near you, see the LITC page at www.taxpayeradvocate.irs.gov/litcmap or IRS Publication 4134, Low Income Taxpayer Clinic List. This Publication is also available by calling the IRS toll-free at 1-800-829-3676 or visiting your local IRS office.
Chapter 4—Tax Collection Issues

WHAT YOU NEED TO KNOW

What is an Offer?

An Offer in Compromise (offer) is an agreement between you (the taxpayer) and the IRS that settles a tax debt for less than the full amount owed. The offer program provides eligible taxpayers with a path toward paying off their tax debt and getting a fresh start. The ultimate goal is a compromise that suits the best interest of both the taxpayer and the IRS. To be considered, generally you must make an appropriate offer based on what the IRS considers your true ability to pay.

Submitting an application does not ensure that the IRS will accept your offer. It begins a process of evaluation and verification by the IRS, taking into consideration any special circumstances that might affect your ability to pay.

This booklet will lead you through a series of steps to help you calculate an appropriate offer based on your assets, income, expenses, and future earning potential. The application requires you to describe your financial situation in detail, so before you begin, make sure you have the necessary information and documentation.

Are You Eligible?

Before your offer can be considered, you must (1) file all tax returns you are legally required to file, (2) have received a bill for at least one tax debt included on your offer, (3) make all required estimated tax payments for the current year, and (4) make all required federal tax deposits for the current quarter if you are a business owner with employees. Your offer will be immediately returned without consideration if you have not filed all tax returns you are legally required to file.

Note: If it is determined you have not filed all tax returns any initial payment sent with your offer will be applied to your tax debt and your offer will be returned along with your application fee.

Bankruptcy

If you or your business is currently in an open bankruptcy proceeding, you are not eligible to apply for an offer. Any resolution of your outstanding tax debts generally must take place within the context of your bankruptcy proceeding.

If you are not sure of your bankruptcy status, contact the Centralized Insolvency Operation at 1-800-973-0424. Be prepared to provide your bankruptcy case number and/or Taxpayer Identification Number.

Can You Pay in Full?

Generally, the IRS will not accept an offer if you can pay your tax debt in full or through an installment agreement and/or equity in assets.

Note: Adjustments or exclusions, such as allowance of $1,000 to a bank balance or $3,450 against the value of a car, are only applied after it is determined that you cannot pay your tax debt in full.

Your Future Tax Refunds

The IRS will keep any refund, including interest, for tax periods extending through the calendar year that the IRS accepts the offer. For example, if your offer is accepted in 2016 and you file your 2016 Form 1040 on April 15, 2017 showing a refund, IRS will apply your refund to your tax debt. The refund is not considered as a payment toward your offer.

Doubt as to Liability

If you have a legitimate doubt that you owe part or all of the tax debt, complete and submit a Form 656-L, Offer in Compromise (Doubt as to Liability). The Form 656-L is not included as part of this package. To request a Form 656-L, visit www.irs.gov or a local IRS office or call toll-free 1-800-TAX-FORM (1-800-829-3676).
**Notice of Federal Tax Lien**

A lien is a legal claim against all your current and future property. When you don’t pay your first bill for taxes due, a lien is created by law and attaches to your property. A Notice of Federal Tax Lien (NFTL) provides public notice to creditors and is filed to establish priority of the IRS claim versus the claims of other creditors. The IRS may file an NFTL while your offer is being considered. However, an NFTL will usually not be filed until a final decision has been made on your offer.

**Note:** A Notice of Federal Tax Lien (NFTL) will not be filed on any individual shared responsibility payment under the Affordable Care Act.

**Trust Fund Taxes**

If your business owes trust fund taxes, responsible individuals may be held liable for the trust fund portion of the tax. Trust fund taxes are the money withheld from an employee’s wages, such as income tax, Social Security, and Medicare taxes. You are not eligible to submit an offer unless the trust fund portion of the tax is paid or the Trust Fund Recovery Penalty determinations have been made on all potentially responsible individual(s). However, if you are submitting the offer as a victim of payroll service provider fraud or failure, the trust fund assessment discussed above is not required.

**Your Rights as a Taxpayer**

Each and every taxpayer has a set of fundamental rights they should be aware of when dealing with the IRS. Explore your rights and our obligations to protect them. For more information on your rights as a taxpayer, go to http://www.irs.gov/Taxpayer-Bill-of-Rights.

**Other Important Facts**

Penalties and interest will continue to accrue during consideration of your offer.

After you file your offer, you must continue to timely file and pay all required tax returns, estimated tax payments, and federal tax payments. Failure to meet your filing and payment responsibilities during consideration of your offer will result in your offer being returned. If your offer is accepted, you must continue to stay current with all tax filing and payment obligations through the fifth year after your offer is accepted (including any extensions).

**Note:** If you have filed your tax returns but you have not received a bill for at least one tax debt included on your offer, your offer may be returned.

An offer cannot be accepted for processing if the IRS has referred your case, or cases, involving all of the liabilities identified in the offer to the Department of Justice (DOJ). In addition, the IRS cannot compromise any restitution amount ordered by a court or a tax debt that has been reduced to judgment.

The law requires the IRS to make certain information from accepted offers available for public inspection and review. These public inspection files are located in designated IRS Area Offices.

The IRS may levy your assets up to the time that the IRS official signs and acknowledges your offer as pending. In addition, the IRS may keep any proceeds received from the levy. If your assets are levied after your offer is pending, immediately contact the IRS person whose name and phone number is listed on the levy.

If you currently have an approved installment agreement, you will not be required to make your installment agreement payments while your offer is being considered. If your offer is not accepted and you have not incurred any additional tax debt, your installment agreement with the IRS will be reinstated with no additional fee.
PAYING FOR YOUR OFFER

Application Fee

Offers require a $186 application fee.

Exception: If you are an individual or are operating as a sole proprietor, or are a disregarded single member Limited Liability Company (LLC) taxed as a sole proprietor and your household gross income meets the Low Income Certification guidelines, you will not be required to send the application fee.

Note: You may be eligible to receive a refund of the application fee if the IRS either (1) accepts the offer to promote effective tax administration, or (2) accepts the offer based on doubt as to collectability and determines that collecting an amount greater than the amount offered would create an economic hardship. After the IRS processes your offer, the IRS will notify you if you are eligible to request a refund of the application fee.

Payment Options

You must select a payment option and include the payment with your offer. The amount of the initial payment and subsequent payments will depend on the total amount of your offer and which of the following payment options you choose:

Lump Sum Cash: This option requires 20% of the total offer amount to be paid with the offer and the remaining balance paid in 5 or fewer payments within 5 or fewer months of the date your offer is accepted.

Periodic Payment: This option requires the first payment to be paid with the offer and the remaining balance paid in monthly payments within 6 to 24 months, in accordance with your proposed offer terms.

Note: Under this option, you must continue to make monthly payments while the IRS is evaluating your offer. Failure to make these payments will cause your offer to be returned. There is no appeal. Total payments must equal the total offer amount.

Exception: If you are an individual, are operating as a sole proprietor, or are a disregarded single member LLC taxed as a sole proprietor, and your household income meets the Low Income Certification guidelines, you will not be required to send the initial payment or make the required monthly payments while your offer is being considered.

All payments sent in with your offer and made during consideration of the offer will be applied to your tax debt. The payments cannot be returned to you unless you pay more than the required payment and designate it as a deposit.

If you do not have sufficient cash to pay for your offer, you may need to consider borrowing money from a bank, friends, and/or family. Other options may include borrowing against or selling other assets.

Note: You may not pay your offer amount with an expected or current tax refund, money already paid, funds attached by any collection action, or anticipated benefits from a capital or net operating loss. If you are planning to use your retirement savings from an IRA or 401k plan, you may have future tax liabilities owed as a result. Contact the IRS or your tax advisor before taking this action.

HOW TO APPLY

Application Process

The application must include:

• Form 656, Offer in Compromise
• Completed Form 433-A (OIC), Collection Information Statement for Wage Earners and Self-Employed Individuals, if applicable
• Completed Form 433-B (OIC), Collection Information Statement for Businesses, if applicable
• $186 application fee, unless you meet Low Income Certification
• Initial offer payment, unless you meet Low Income Certification

Note: Your offer(s) cannot be considered without the completed and signed Collection Information Statement(s), Form 433-A (OIC) and/or 433-B (OIC).
COMPLETING THE APPLICATION PACKAGE

**Step 1 – Gather Your Information**

To calculate an offer amount, you will need to gather information about your financial situation, including cash, investments, available credit, assets, income, and debt.

You will also need to gather information about your average household’s gross monthly income and expenses. The entire household includes all those in addition to yourself who contribute money to pay expenses relating to the household such as, rent, utilities, insurance, groceries, etc. This is necessary for the IRS to accurately evaluate your offer.

In general, the IRS will not consider expenses for tuition for private schools, college expenses, charitable contributions, and other unsecured debt payments as part of the expense calculation.

**Step 2 – Fill out Form 433-A (OIC), Collection Information Statement for Wage Earners and Self-Employed Individuals**

Fill out Form 433-A (OIC) if you are an individual wage earner and/or operate as a sole proprietor, a disregarded single member LLC taxed as a sole proprietor or are submitting an offer on behalf of a deceased individual. This will be used to calculate an appropriate offer amount based on your assets, income, expenses, and future earning potential. You will have the opportunity to provide a written explanation of any special circumstances that affect your financial situation.
<table>
<thead>
<tr>
<th>Step 3 – Fill out Form 433-B (OIC), Collection Information Statement for Businesses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fill out Form 433-B (OIC) if the business is a Corporation, Partnership, LLC classified as a corporation, single member LLC taxed as a corporation, or other multi-owner/multi-member LLC. This will be used to calculate an appropriate offer amount based on the business assets, income, expenses, and future earning potential. If the business has assets that are used to produce income (for example, a tow truck used in the business for towing vehicles), the business may be allowed to exclude equity in these assets.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Step 4 – Attach Required Documentation</th>
</tr>
</thead>
<tbody>
<tr>
<td>You will need to attach supporting documentation with Form(s) 433-A (OIC) and 433-B (OIC). A list of the documents required will be found at the end of each form. Include copies of all required attachments. Do not send original documents.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Step 5 – Fill out Form 656, Offer in Compromise</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fill out Form 656. The Form 656 identifies the tax years and type of tax you would like to compromise. It also identifies your offer amount and the payment terms.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Step 6 – Include Initial Payment and $186 Application Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Include a personal check, cashier's check, or money order for your initial payment based on the payment option you selected (20% of the offer amount for a lump sum cash offer or the first month's payment for a periodic payment offer).</td>
</tr>
</tbody>
</table>

Include a separate personal check, cashier's check, or money order for the application fee ($186).

Make both payments payable to the “United States Treasury.” All payments must be made in U.S. dollars.

If you meet the Low Income Certification guidelines, the initial payment and application fee are not required.

<table>
<thead>
<tr>
<th>Step 7 – Mail the Application Package</th>
</tr>
</thead>
<tbody>
<tr>
<td>Make a copy of your application package and keep it for your records.</td>
</tr>
</tbody>
</table>

Mail the application package to the appropriate IRS facility. See page 27, Application Checklist, for details.

**Note:** If you are working with an IRS employee, let him or her know you are sending or have sent an offer to compromise your tax debt(s).

**IMPORTANT INFORMATION**

*After You Mail Your Application Continue to:*

Promptly reply to any requests for additional information within the time frame specified.

If you selected the Periodic Payment option, you must continue to make the payments during consideration of your offer, unless you meet the Low Income Certification. Failure to reply timely or make monthly payments may result in the return of your offer without appeal rights.

If your offer is accepted, you must continue to timely file all required tax returns and timely pay all estimated tax payments and federal tax payments that become due in the future. If you fail to timely file and timely pay any tax obligations that become due within the five years after your offer is accepted (including any extensions) your offer may be defaulted. If your offer is defaulted, you will be liable for the original tax debt, less payments made, and all accrued interest and penalties. An offer does not stop the accrual of interest and penalties. Please note that if your final payment is more than the agreed amount by $50 or less the money will not be returned but will be applied to your tax debt. If your final payment is more than the agreed amount by more than $50, your money will be returned to you.

In addition, your offer may be defaulted if you fail to promptly pay any tax debts assessed after acceptance of your offer for any tax years prior to acceptance that were not included in your original offer.
**Section 1**

**Personal and Household Information**

<table>
<thead>
<tr>
<th>Last Name</th>
<th>First Name</th>
<th>Date of Birth (mm/dd/yyyy)</th>
<th>Social Security Number</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Marital status: ☐ Unmarried  ☑ Married

Home Physical Address: (Street, City, State, ZIP Code)

Do you:

☐ Own your home  ☐ Rent
☐ Other (specify e.g., share rent, live with relative, etc.)

County of Residence

Primary Phone ( ) -

Secondary Phone ( ) -

Fax Number ( ) -

Home Mailing Address (if different from above or Post Office Box number)

**Provide information about your spouse.**

<table>
<thead>
<tr>
<th>Spouse’s Last Name</th>
<th>Spouse’s First Name</th>
<th>Date of Birth (mm/dd/yyyy)</th>
<th>Social Security Number</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Provide information for all other persons in the household or claimed as a dependent.**

<table>
<thead>
<tr>
<th>Name</th>
<th>Age</th>
<th>Relationship</th>
<th>Claimed as a dependent on your Form 1040?</th>
<th>Contributes to household income?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>☐ Yes ☐ No</td>
<td>☐ Yes ☐ No</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>☐ Yes ☐ No</td>
<td>☐ Yes ☐ No</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>☐ Yes ☐ No</td>
<td>☐ Yes ☐ No</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>☐ Yes ☐ No</td>
<td>☐ Yes ☐ No</td>
</tr>
</tbody>
</table>

**Section 2**

**Employment Information for Wage Earners**

Complete this section if you or your spouse are wage earners and received a Form W-2. If you or your spouse have self-employment income (that is you file a Schedule C, E, F, etc.) instead of, or in addition to wage income, you must also complete Business Information in Sections 4, 5, and 6.

**Your Employer’s Name**

Employer’s Address (street, city, state, zip code)

Do you have an ownership interest in this business?

☐ Yes ☐ No

If yes, check the business interest that applies:

☐ Partner  ☐ Officer  ☐ Sole proprietor

Your Occupation

How long with this employer (years) (months)

**Spouse’s Employer’s Name**

Employer’s Address (street, city, state, zip code)

Do your spouse have an ownership interest in this business?

☐ Yes ☐ No

If yes, check the business interest that applies:

☐ Partner  ☐ Officer  ☐ Sole proprietor

Spouse’s Occupation

How long with this employer (years) (months)
### Section 3  Personal Asset Information

Use the most current statement for each type of account, such as checking, savings, money market and online accounts, stored value cards (such as a payroll card from an employer), investment and retirement accounts (IRAs, Keogh, 401(k) plans, stocks, bonds, mutual funds, certificates of deposit), life insurance policies that have a cash value, and safe deposit boxes. Asset value is subject to adjustment by IRS based on individual circumstances. Enter the total amount available for each of the following (if additional space is needed include attachments).

Round to the nearest dollar. Do not enter a negative number. If any line item is a negative number, enter "0".

#### Cash and Investments (domestic and foreign)

<table>
<thead>
<tr>
<th>Account Type</th>
<th>bank Name</th>
<th>Account Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash</td>
<td>Checking</td>
<td>Savings</td>
</tr>
<tr>
<td>Bank Name</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(1a) $</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Account Type</th>
<th>bank Name</th>
<th>Account Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Checking</td>
<td>Savings</td>
<td>Money Market/CD</td>
</tr>
<tr>
<td>Bank Name</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(1b) $</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Total of bank accounts from attachment (1c) $

Add lines (1a) through (1c) minus ($1,000) = (1) $

#### Investment Account:

<table>
<thead>
<tr>
<th>Name of Financial Institution</th>
<th>Account Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Stocks</td>
<td>Bonds</td>
</tr>
<tr>
<td>Current Market Value</td>
<td>Minus Loan Balance</td>
</tr>
<tr>
<td>$</td>
<td>$</td>
</tr>
</tbody>
</table>

(2a) $

Total investment accounts from attachment. [current market value X.8 minus loan balance(s)]

(2b) $

Add lines (2a) through (2c) = (2) $

#### Retirement Account:

<table>
<thead>
<tr>
<th>Name of Financial Institution</th>
<th>Account Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>401K</td>
<td>IRA</td>
</tr>
<tr>
<td>Current Market Value</td>
<td>Minus Loan Balance</td>
</tr>
<tr>
<td>$</td>
<td>$</td>
</tr>
</tbody>
</table>

(3a) $

Total of retirement accounts from attachment. [current market value X.8 minus loan balance(s)]

(3b) $

Add lines (3a) through (3c) = (3) $

#### Cash Value of Life Insurance Policies

<table>
<thead>
<tr>
<th>Name of Insurance Company</th>
<th>Policy Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Current Cash Value</td>
<td>Minus Loan Balance</td>
</tr>
<tr>
<td>$</td>
<td>$</td>
</tr>
</tbody>
</table>

(4a) $

Total cash value of life insurance policies from attachment Minus Loan Balance(s)

(4b) $

Add lines (4a) through (4b) = (4) $
## Section 3 (Continued)

### Personal Asset Information

#### Real Estate (Enter information about any house, condo, co-op, time share, etc. that you own or are buying)

<table>
<thead>
<tr>
<th>Property Address (Street Address, City, State, ZIP Code)</th>
<th>Property Address (Street Address, City, State, ZIP Code)</th>
<th>Primary Residence</th>
<th>Yes</th>
<th>No</th>
<th>Date Purchased</th>
<th>County and Country</th>
<th>Date Purchased</th>
<th>County and Country</th>
<th>Date of Final Payment</th>
<th>How title is held (joint tenancy, etc.)</th>
<th>Description of Property</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Current Market Value**

\[
\text{Current Market Value} \times 0.8 = \text{Minus Loan Balance (Mortgages, etc.)} - \text{(Total Value of Real Estate)} = (5a) \$
\]

**Total value of property(s) from attachment [current market value X .8 minus any loan balance(s)]**

\[(5c) \$
\]

**Add lines (5a) through (5c) = (5) \$**

#### Vehicles (Enter information about any cars, boats, motorcycles, etc. that you own or lease)

<table>
<thead>
<tr>
<th>Vehicle Make &amp; Model</th>
<th>Year</th>
<th>Date Purchased</th>
<th>Mileage</th>
<th>Lease</th>
<th>Name of Creditor</th>
<th>Date of Final Payment</th>
<th>Monthly Lease/Loan Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Current Market Value**

\[
\text{Current Market Value} \times 0.8 = \text{Minus Loan Balance (Mortgages, etc.)} - \text{(Total Value of Vehicle)} = (6a) \$
\]

**Total value of vehicle (if the vehicle is leased, enter 0 as the total value)**

\[(6a) \$
\]

**Subtract $3,450 from line (6a)**

\[(6b) \$
\]

**If line (6a) minus $3,450 is a negative number, enter "0"**

**Total value of vehicles listed from attachment [current market value X .8 minus any loan balance(s)]**

\[(6e) \$
\]

**Total lines (6b), (6d), and (6e) = (6) \$**

---

Catalog Number 55896Q  
www.irs.gov  
Form 433-A (OIC) (Rev. 3-2017)
### Section 3 (Continued)  Personal Asset Information

Other valuable items (artwork, collections, jewelry, items of value in safe deposit boxes, interest in a company or business that is not publicly traded, etc.)

**Note:** Do not include clothing, furniture and other personal effects.

**Description of asset:**

<table>
<thead>
<tr>
<th>Current Market Value</th>
<th>Minus Loan Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>$</td>
<td>X .8 = $</td>
</tr>
<tr>
<td>$</td>
<td>– $</td>
</tr>
<tr>
<td>(7a) $</td>
<td></td>
</tr>
</tbody>
</table>

**Description of asset:**

<table>
<thead>
<tr>
<th>Current Market Value</th>
<th>Minus Loan Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>$</td>
<td>X .8 = $</td>
</tr>
<tr>
<td>$</td>
<td>– $</td>
</tr>
<tr>
<td>(7b) $</td>
<td></td>
</tr>
</tbody>
</table>

Total value of valuable items listed from attachment (current market value X .8 minus any loan balance(s))

| (7c) $               |

Add lines (7a) through (7c) = (7) $

Do not include amount on the lines with a letter beside the number. Round to the nearest whole dollar. Do not enter a negative number. If any line item is a negative, enter "0" on that line.

**Box A**

Available Individual Equity in Assets

| $               |

NOTE: If you or your spouse are self-employed, Sections 4, 5, and 6 must be completed before continuing with Sections 7 and 8.

### Section 4  Self-Employed Information

If you or your spouse are self-employed (e.g., files Schedule(s) C, E, F, etc.), complete this section.

Is your business a sole proprietorship?  
- [ ] Yes  
- [ ] No

Name of Business

<table>
<thead>
<tr>
<th>Business Telephone Number</th>
<th>Employer Identification Number</th>
<th>Business Address (Street, City, State, ZIP code)</th>
</tr>
</thead>
<tbody>
<tr>
<td>( ) -</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Description of Business

<table>
<thead>
<tr>
<th>Total Number of Employees</th>
<th>Frequency of Tax Deposits</th>
<th>Average Gross Monthly Payroll $</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Do you or your spouse have any other business interests? Include any interest in an LLC, LLP, corporation, partnership, etc.

- [ ] Yes  
  (Percentage of ownership:  
  ) Title:
- [ ] No

Business Name

<table>
<thead>
<tr>
<th>Business Telephone Number</th>
<th>Employer Identification Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>( ) -</td>
<td></td>
</tr>
</tbody>
</table>

Type of business (Select one)

- [ ] Partnership  
- [ ] LLC  
- [ ] Corporation  
- [ ] Other

### Section 5  Business Asset Information (for Self-Employed)

List business assets such as bank accounts, tools, books, machinery, equipment, business vehicles and real property that is owned/leased/rented. If additional space is needed, attach a list of items. Do not include personal assets listed in Section 3.

Round to the nearest whole dollar. Do not enter a negative number. If any line item is a negative number, enter "0".

<table>
<thead>
<tr>
<th>Cash</th>
<th>Checking</th>
<th>Savings</th>
<th>Money Market/CD</th>
<th>Online Account</th>
<th>Stored Value Card</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Bank Name</th>
<th>Account Number</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(8a) $</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Cash</th>
<th>Checking</th>
<th>Savings</th>
<th>Money Market/CD</th>
<th>Online Account</th>
<th>Stored Value Card</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Bank Name</th>
<th>Account Number</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(8b) $</td>
</tr>
</tbody>
</table>

Total bank accounts from attachment

| (8c) $               |

Add lines (8a) through (8c) = (8) $
Section 5 (Continued)  

Business Asset Information (for Self-Employed)

<table>
<thead>
<tr>
<th>Description of asset:</th>
<th>Current Market Value</th>
<th>Minus Loan Balance</th>
<th>(if leased or used in the production of income, enter 0 as the total value)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$</td>
<td>X .8 = $</td>
<td>$</td>
</tr>
<tr>
<td></td>
<td>$</td>
<td>Minus Loan Balance</td>
<td>(if leased or used in the production of income, enter 0 as the total value)</td>
</tr>
<tr>
<td></td>
<td>$</td>
<td>$ = (9a) $</td>
<td></td>
</tr>
</tbody>
</table>

Total value of assets listed from attachment [current market value X .8 minus any loan balance(s)]

Add lines (9a) through (9c) = (9) $

Enter the value of line (9) minus line (10). If less than zero enter zero. = (11) $

Notes Receivable
Do you have notes receivable?  
[ ] Yes  [ ] No
If yes, attach current listing that includes name(s) and amount of note(s) receivable.

Accounts Receivable
Do you have accounts receivable, including e-payment, factoring companies, and any bartering or online auction accounts?  
[ ] Yes  [ ] No
If yes, you may be asked to provide a list of your account(s) receivable.

Do not include amounts from the lines with a letter beside the number [for example: (9c)]. Round to the nearest whole dollar. Do not enter a negative number. If any line item is a negative, enter “0” on that line.

Box B  
Available Business Equity in Assets

Section 6  

Business Income and Expense Information (for Self-Employed)

If you provide a current profit and loss (P&L) statement for the information below, enter the total gross monthly income on line 17 and your monthly expenses on line 29 below. Do not complete lines (12) - (16) and (18) - (28). You may use the amounts claimed for income and expenses on your most recent Schedule C; however, if the amount has changed significantly within the past year, a current P&L should be submitted to substantiate the claim.

Round to the nearest whole dollar. Do not enter a negative number. If any line item is a negative number, enter “0”.

Business Income (You may average 6-12 months income/receipts to determine your Gross monthly income/receipts.)

<table>
<thead>
<tr>
<th>Business Income</th>
<th>(You may average 6-12 months income/receipts to determine your Gross monthly income/receipts.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gross receipts</td>
<td>(12) $</td>
</tr>
<tr>
<td>Gross rental income</td>
<td>(13) $</td>
</tr>
<tr>
<td>Interest income</td>
<td>(14) $</td>
</tr>
<tr>
<td>Dividends</td>
<td>(15) $</td>
</tr>
<tr>
<td>Other income</td>
<td>(16) $</td>
</tr>
</tbody>
</table>

Add lines (12) through (16) = (17) $

Business Expenses (You may average 6-12 months expenses to determine your average expenses.)

<table>
<thead>
<tr>
<th>Business Expenses</th>
<th>(You may average 6-12 months expenses to determine your average expenses.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Materials purchased</td>
<td>(e.g., items directly related to the production of a product or service)</td>
</tr>
<tr>
<td>Inventory purchased</td>
<td>(e.g., goods bought for resale)</td>
</tr>
<tr>
<td>Gross wages and salaries</td>
<td>(20) $</td>
</tr>
<tr>
<td>Rent</td>
<td>(21) $</td>
</tr>
<tr>
<td>Supplies</td>
<td>(items used to conduct business and used up within one year, e.g., books, office supplies, professional equipment, etc.)</td>
</tr>
<tr>
<td>Utilities/telephones</td>
<td>(23) $</td>
</tr>
<tr>
<td>Vehicle costs</td>
<td>(gas, oil, repairs, maintenance)</td>
</tr>
<tr>
<td>Business Insurance</td>
<td>(25) $</td>
</tr>
<tr>
<td>Current Business Taxes</td>
<td>(e.g., Real estate, excise, franchise, occupational, personal property, sales and employer’s portion of employment taxes)</td>
</tr>
<tr>
<td>Secured debts</td>
<td>(not credit cards)</td>
</tr>
<tr>
<td>Other business expenses</td>
<td>(include a list)</td>
</tr>
</tbody>
</table>

Add lines (18) through (28) = (29) $

Subtract line (29) from line (17) and enter the amount in Box C = $
### Section 7 Monthly Household Income and Expense Information

Enter your household's gross monthly income. The information below is for yourself, your spouse, and anyone else who contributes to your household's income. The entire household includes spouse, non-liable spouse, significant other, children, and others who contribute to the household. This is necessary for the IRS to accurately evaluate your offer.

**Monthly Household Income**

**Note:** Entire household income should also include income that is considered not taxable and may not be included on your tax return.

<table>
<thead>
<tr>
<th>Source of Income</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gross Wages</td>
<td></td>
</tr>
<tr>
<td>Social Security</td>
<td></td>
</tr>
<tr>
<td>Pension(s)</td>
<td></td>
</tr>
<tr>
<td>Other Income (e.g. unemployment)</td>
<td></td>
</tr>
<tr>
<td><strong>Total primary taxpayer income</strong></td>
<td><strong>(30)</strong> $</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Source of Income</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gross Wages</td>
<td></td>
</tr>
<tr>
<td>Social Security</td>
<td></td>
</tr>
<tr>
<td>Pension(s)</td>
<td></td>
</tr>
<tr>
<td>Other Income (e.g. unemployment)</td>
<td></td>
</tr>
<tr>
<td><strong>Total spouse income</strong></td>
<td><strong>(31)</strong> $</td>
</tr>
</tbody>
</table>

### Additional sources of income used to support the household, e.g., non-liable spouse, or anyone else who may contribute to the household income, etc.

<table>
<thead>
<tr>
<th>Source of Income</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>(32)</strong> $</td>
<td></td>
</tr>
</tbody>
</table>

**Note:** Do not enter a negative number. If any line item is a negative, enter "0" on that line. Add lines (30) through (38) and enter the amount in Box D = **Box D Total Household Income** $.

### Monthly Household Expenses

Enter your average monthly expenses.

**Note:** For expenses claimed in boxes (39) and (45) only, you should list the full amount of the allowable standard even if the actual amount you pay is less. You may find the allowable standards at [http://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/Collection-Financial-Standards](http://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/Collection-Financial-Standards).

<table>
<thead>
<tr>
<th>Expenses</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Food, clothing, and miscellaneous (e.g., housekeeping supplies, personal care products, minimum payment on credit card). A reasonable estimate of these expenses may be used.</td>
<td><strong>(39)</strong> $</td>
</tr>
<tr>
<td>Housing and utilities (e.g., rent or mortgage payment and average monthly cost of property taxes, home insurance, maintenance, dues, fees and utilities including electricity, gas, other fuels, trash collection, water, cable television and internet, telephone, and cell phone).</td>
<td><strong>(40)</strong> $</td>
</tr>
<tr>
<td>Vehicle loan and/or lease payment(s)</td>
<td><strong>(41)</strong> $</td>
</tr>
<tr>
<td>Vehicle operating costs (e.g., average monthly cost of maintenance, repairs, insurance, fuel, registrations, licenses, inspections, parking, tolls, etc.). A reasonable estimate of these expenses may be used.</td>
<td><strong>(42)</strong> $</td>
</tr>
<tr>
<td>Public transportation costs (e.g., average monthly cost of fares for mass transit such as bus, train, ferry, taxi, etc.). A reasonable estimate of these expenses may be used.</td>
<td><strong>(43)</strong> $</td>
</tr>
<tr>
<td>Health insurance premiums</td>
<td><strong>(44)</strong> $</td>
</tr>
<tr>
<td>Out-of-pocket health care costs (e.g. average monthly cost of prescription drugs, medical services, and medical supplies like eyeglasses, hearing aids, etc.)</td>
<td><strong>(45)</strong> $</td>
</tr>
<tr>
<td>Court-ordered payments (e.g., monthly cost of any alimony, child support, etc.)</td>
<td><strong>(46)</strong> $</td>
</tr>
<tr>
<td>Child/dependent care payments (e.g., daycare, etc.)</td>
<td><strong>(47)</strong> $</td>
</tr>
<tr>
<td>Life insurance premiums</td>
<td><strong>(48)</strong> $</td>
</tr>
<tr>
<td>Current monthly taxes (e.g., monthly cost of federal, state, and local tax, personal property tax, etc.)</td>
<td><strong>(49)</strong> $</td>
</tr>
</tbody>
</table>
Section 7  Monthly Household Income and Expense Information (Continued)

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Secured debts (e.g., any loan where you pledged an asset as collateral not previously listed, government guaranteed Student Loan)</td>
<td>(50) $</td>
</tr>
<tr>
<td>Enter the amount of your monthly delinquent State and/or Local Tax payment(s)</td>
<td>(51) $</td>
</tr>
</tbody>
</table>

Round to the nearest whole dollar.
Do not enter a negative number. If any line item is a negative, enter "0" on that line.
Add lines (39) through (51) and enter the amount in Box E = Box E
Total Household Expenses $

Round to the nearest whole dollar.
Do not enter a negative number. If any line item is a negative, enter "0" on that line.
Subtract Box E from Box D and enter the amount in Box F = Box F
Remaining Monthly Income $

Section 8  Calculate Your Minimum Offer Amount

The next steps calculate your minimum offer amount. The amount of time you take to pay your offer in full will affect your minimum offer amount. Paying over a shorter period of time will result in a smaller minimum offer amount.

Note: The multipliers below (12 and 24) and the calculated offer amount do not apply if IRS determines you have the ability to pay your tax debt in full within the legal period to collect.

If you will pay your offer in 5 or fewer payments within 5 months or less, multiply "Remaining Monthly Income" (Box F) by 12 to get "Future Remaining Income" (Box G). Do not enter a number less than $0.

Enter the total from Box F $ \times 12 = Box G Future Remaining Income $

If you will pay your offer in 6 to 24 months, multiply "Remaining Monthly Income" (Box F) by 24 to get "Future Remaining Income" (Box H). Do not enter a number less than $0.

Enter the total from Box F $ \times 24 = Box H Future Remaining Income $

Determine your minimum offer amount by adding the total available assets from Box A and Box B (if applicable) to the amount in either Box G or Box H.

Enter the amount from Box A plus Box B (if applicable) $ Enter the amount from either Box G or Box H $

= Offer Amount
Your offer must be more than zero ($0). Do not leave blank. Use whole dollars only.

If you cannot pay the Offer Amount shown above due to special circumstances, explain on the Form 656, Offer in Compromise, Section 1, Low Income Certification. You must offer an amount more than $0.

Section 9  Other Information

Additional information IRS needs to consider settlement of your tax debt. If you or your business are currently in a bankruptcy proceeding, you are not eligible to apply for an offer.

Are you the beneficiary of a trust, estate, or life insurance policy?
Yes ☐  No ☐

Are you currently in bankruptcy?
Yes ☐  No ☐

Have you filed bankruptcy in the past 10 years?
Yes ☐  No ☐

Discharge/Dismissal Date (mm/dd/yyyy) Location Filed

Are you or have you been party to a lawsuit?
Yes ☐  No ☐

If yes, date the lawsuit was resolved: (mm/dd/yyyy)

Are you or have you been party to any lawsuits involving the IRS/United States (including any suits regarding tax matters)?
Yes ☐  No ☐

If yes and the suit included tax debt, provide the types of tax and periods involved.

In the past 10 years, have you transferred any assets for less than their full value?
Yes ☐  No ☐

If yes, provide date, value, and type of asset transferred: (mm/dd/yyyy)
Chapter 4—Tax Collection Issues

In the past 3 years have you transferred any real property (land, house, etc.)?

☐ Yes ☐ No
If yes, list the type of property, value, and date of the transfer.

Have you lived outside the U.S. for 6 months or longer in the past 10 years?

☐ Yes ☐ No

Do you have any assets or own any real property outside the U.S.?

☐ Yes ☐ No
If yes, provide description, location, and value.

Do you have any funds being held in trust by a third party?

☐ Yes ☐ No  If yes, how much $  Where:

<table>
<thead>
<tr>
<th>Section 10</th>
<th>Signatures</th>
</tr>
</thead>
</table>

Under penalties of perjury, I declare that I have examined this offer, including accompanying documents, and to the best of my knowledge it is true, correct, and complete.

Signature of Taxpayer
Date (mm/dd/yyyy)

Signature of Spouse
Date (mm/dd/yyyy)

Remember to include all applicable attachments listed below.

☑ Copies of the most recent pay stub, earnings statement, etc., from each employer

☑ Copies of the most recent statement for each investment and retirement account

☑ Copies of the most recent statement, etc., from all other sources of income such as pensions, Social Security, rental income, interest and dividends (including any received from a related partnership, corporation, LLC, LLP, etc.), court order for child support, alimony, and rent subsidies

☑ Copies of bank statements for the three most recent months

☑ Copies of the most recent statement from lender(s) on loans such as mortgages, second mortgages, vehicles, etc., showing monthly payments, loan payoffs, and balances

☑ List of Notes Receivable, if applicable

☑ Verification of delinquent State/Local Tax Liability, if applicable

☑ Documentation to support any special circumstances described in the “Explanation of Circumstances” on Form 656, if applicable

☑ Attach a Form 2848, Power of Attorney, if you would like your attorney, CPA, or enrolled agent to represent you and you do not have a current form on file with the IRS.

☑ Completed and signed Form 656
**Chapter 4—Tax Collection Issues**

**Form 433-B (OIC)**

(Rev. March 2017)

Collection Information Statement for Businesses

Complete this form if your business is a
- Corporation
- Partnership
- Limited Liability Company (LLC) classified as a corporation
- Other multi-owner/multi-member LLC

Note: If your business is a sole proprietorship or a disregarded single member LLC taxed as a sole proprietor (filing Schedule C, D, E, F, etc.), do not use this form. Instead, complete Form 433-A (OIC) Collection Information Statement for Wage Earners and Self-Employed Individuals. This form should only be used with the Form 656, Offer in Compromise.

Include attachments if additional space is needed to respond completely to any question.

<table>
<thead>
<tr>
<th>Section 1</th>
<th>Business Information</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Business Name</strong></td>
<td><strong>Employer Identification Number</strong></td>
</tr>
<tr>
<td><strong>Business Physical Address (street, city, state, zip code)</strong></td>
<td><strong>County of Business Location</strong></td>
</tr>
<tr>
<td><strong>Primary Phone</strong></td>
<td><strong>Secondary Phone</strong></td>
</tr>
<tr>
<td>( ) -</td>
<td>( ) -</td>
</tr>
<tr>
<td><strong>Business website address</strong></td>
<td><strong>Description of Business and DBA or &quot;Trade Name&quot;</strong></td>
</tr>
<tr>
<td><strong>Fax Number</strong></td>
<td><strong>Business Mailing Address (if different from above or Post Office Box number)</strong></td>
</tr>
<tr>
<td>( ) -</td>
<td><strong>Does the business outsource its payroll processing and tax return preparation for a fee?</strong></td>
</tr>
<tr>
<td><strong>Federal Contractor</strong></td>
<td><strong>Total Number of Employees</strong></td>
</tr>
<tr>
<td>Yes ☐</td>
<td>☐ Yes ☐ No</td>
</tr>
<tr>
<td><strong>Frequency of Tax Deposits</strong></td>
<td><strong>Average Gross Monthly Payroll</strong></td>
</tr>
<tr>
<td>$</td>
<td></td>
</tr>
</tbody>
</table>

Provide information about all partners, officers, LLC members, major shareholders (foreign and domestic), etc., associated with the business. Include attachments if additional space is needed.

<table>
<thead>
<tr>
<th>Last Name</th>
<th>First Name</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Percent of Ownership and Annual Salary</strong></td>
<td><strong>Social Security Number</strong></td>
<td><strong>Home Address (Street, City, State, ZIP Code)</strong></td>
</tr>
<tr>
<td><strong>Primary Phone</strong></td>
<td><strong>Secondary Phone</strong></td>
<td></td>
</tr>
<tr>
<td>( ) -</td>
<td>( ) -</td>
<td></td>
</tr>
<tr>
<td><strong>Last Name</strong></td>
<td><strong>First Name</strong></td>
<td><strong>Title</strong></td>
</tr>
<tr>
<td><strong>Percent of Ownership and Annual Salary</strong></td>
<td><strong>Social Security Number</strong></td>
<td><strong>Home Address (Street, City, State, ZIP Code)</strong></td>
</tr>
<tr>
<td><strong>Primary Phone</strong></td>
<td><strong>Secondary Phone</strong></td>
<td></td>
</tr>
<tr>
<td>( ) -</td>
<td>( ) -</td>
<td></td>
</tr>
<tr>
<td><strong>Last Name</strong></td>
<td><strong>First Name</strong></td>
<td><strong>Title</strong></td>
</tr>
<tr>
<td><strong>Percent of Ownership and Annual Salary</strong></td>
<td><strong>Social Security Number</strong></td>
<td><strong>Home Address (Street, City, State, ZIP Code)</strong></td>
</tr>
<tr>
<td><strong>Primary Phone</strong></td>
<td><strong>Secondary Phone</strong></td>
<td></td>
</tr>
<tr>
<td>( ) -</td>
<td>( ) -</td>
<td></td>
</tr>
</tbody>
</table>

Catalog Number 55897B  www.irs.gov  Form 433-B (OIC) (Rev. 3-2017)
### Section 2 Business Asset Information

Gather the most current statement from banks, lenders on loans, mortgages (including second mortgages), and current value of business assets. To estimate the current value, you may consult resources like Kelley Blue Book (www.kbb.com), NADA (www.nada.com), local real estate postings of properties similar to yours, and any other websites or publications that show what the business assets would be worth if you were to sell them. Asset value is subject to adjustment by IRS. Enter the total amount available for each of the following.

**Round to the nearest dollar. Do not enter a negative number. If any line item is a negative number, enter "0".**

#### Cash and Investments (domestic and foreign)

<table>
<thead>
<tr>
<th>Bank Name</th>
<th>Account Number</th>
<th>(1a) $</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Bank Name</th>
<th>Account Number</th>
<th>(1b) $</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Bank Name</th>
<th>Account Number</th>
<th>(1c) $</th>
</tr>
</thead>
</table>

**Total bank accounts from attachment (1d) $**

**Add lines (1a) through (1d) = (1) $**

<table>
<thead>
<tr>
<th>Name of Financial Institution</th>
<th>Account Number</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Current Market Value</th>
<th>Minus Loan Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>$ X .8 = $</td>
<td>– $</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Name of Financial Institution</th>
<th>Account Number</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Current Market Value</th>
<th>Minus Loan Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>$ X .8 = $</td>
<td>– $</td>
</tr>
</tbody>
</table>

**Total investment accounts from attachment. [current market value X.8 minus loan balance(s)] (2c) $**

**Add lines (2a) through (2c) = (2) $**

### Notes Receivable

Do you have notes receivable?  

- Yes  
- No

If yes, attach current listing which includes name, age, and amount of note(s) receivable.

### Accounts Receivable

Do you have accounts receivable, including e-payment, factoring companies, and any bartering or online auction accounts?  

- Yes  
- No

If yes, you may be asked to provide a list of name, age, and amount of the account(s) receivable.
## Section 2 (Continued) Business Asset Information

If the business owns more properties, vehicles, or equipment than shown in this form, please list on a separate attachment.

### Real Estate

<table>
<thead>
<tr>
<th>Property Address (Street Address, City, State, ZIP Code)</th>
<th>Property Description</th>
<th>Date Purchased</th>
<th>Name of Creditor</th>
<th>Date of Final Payment</th>
<th>County and Country</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Current Market Value $ \times .8 = $ ____________ Minus Loan Balance (mortgages, etc.) $ = ____________

Total Value of Real Estate = ____________

### Business Vehicles

<table>
<thead>
<tr>
<th>Vehicle Make &amp; Model</th>
<th>Year</th>
<th>Date Purchased</th>
<th>Mileage or Use Hours</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

- **Lease**
  - Monthly Lease/Loan Amount $ ____________
  - Name of Creditor
  - Date of Final Payment

- **Loan**
  - Name of Creditor
  - Date of Final Payment

Current Market Value $ \times .8 = $ ____________ Minus Loan Balance $ = ____________

Total value of vehicle (if the vehicle is leased, enter 0 as the total value) = ____________

### Add lines (3a) through (3c) = ____________

### Add lines (4a) through (4d) = ____________
**Section 2 (Continued)**

**Business Asset Information**

Other Business Equipment

[If you have more than one piece of equipment, please list on a separate attachment and put the total of all equipment in box (5b)]

<table>
<thead>
<tr>
<th>Type of equipment</th>
<th>Current Market Value</th>
<th>Minus Loan Balance</th>
<th>Total value of equipment</th>
<th>Total value of all business equipment</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$</td>
<td>$</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>X .8 = $</td>
<td>$</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Total value of equipment listed from attachment [current market value X .8 minus any loan balance(s)] = (5b) $

Box A Available Equity in Assets $ 

Do not include amount on the lines with a letter beside the number. Round to the nearest dollar.

Do not enter a negative number. If any line item is a negative number, enter "0" on that line.

Add lines (1) through (5) and enter the amount in Box A = 

Box A Available Equity in Assets $ 

**Section 3**

**Business Income Information**

Enter the average gross monthly income of your business. To determine your gross monthly income use the most recent 6-12 months documentation of commissions, invoices, gross receipts from sales/services, etc.; most recent 6-12 months earnings statements, etc., from every other source of income (such as rental income, interest and dividends, or subsidies); or you may use the most recent 6-12 months Profit and Loss (P&L) to provide the information of income and expenses.

Note: If you provide a current profit and loss statement for the information below, enter the total gross monthly income in Box B below. Do not complete lines (6) - (10). Entire household income should also include income that is considered as not taxable and may not be included on your tax return.

<table>
<thead>
<tr>
<th>Gross receipts</th>
<th>(6) $</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gross rental income</td>
<td>(7) $</td>
</tr>
<tr>
<td>Interest income</td>
<td>(8) $</td>
</tr>
<tr>
<td>Dividends</td>
<td>(9) $</td>
</tr>
<tr>
<td>Other income (Specify on attachment)</td>
<td>(10) $</td>
</tr>
</tbody>
</table>

Do not enter a negative number. If any line item is a negative number, enter "0" on that line.

Add lines (6) through (10) and enter the amount in Box B = Box B Total Business Income $ 

**Section 4**

**Business Expense Information**

Enter the average gross monthly expenses for your business using your most recent 6-12 months statements, bills, receipts, or other documents showing monthly recurring expenses.

Note: If you provide a current profit and loss statement for the information below, enter the total monthly expenses in Box C below. Do not complete lines (11) - (20).

<table>
<thead>
<tr>
<th>Materials purchased (e.g., items directly related to the production of a product or service)</th>
<th>(11) $</th>
</tr>
</thead>
<tbody>
<tr>
<td>Inventory purchased (e.g., goods bought for resale)</td>
<td>(12) $</td>
</tr>
<tr>
<td>Gross wages and salaries</td>
<td>(13) $</td>
</tr>
<tr>
<td>Rent</td>
<td>(14) $</td>
</tr>
<tr>
<td>Supplies (items used to conduct business and used up within one year, e.g., books, office supplies, professional equipment, etc.)</td>
<td>(15) $</td>
</tr>
<tr>
<td>Utilities/telephones</td>
<td>(16) $</td>
</tr>
<tr>
<td>Vehicle costs (gas, oil, repairs, maintenance)</td>
<td>(17) $</td>
</tr>
<tr>
<td>Insurance (other than life)</td>
<td>(18) $</td>
</tr>
<tr>
<td>Current taxes (e.g., real estate, state, and local income tax, excise franchise, occupational, personal property, sales and employer's portion of employment taxes, etc.)</td>
<td>(19) $</td>
</tr>
<tr>
<td>Other expenses (e.g., secured debt payments. Specify on attachment. Do not include credit card payments)</td>
<td>(20) $</td>
</tr>
</tbody>
</table>

Round to the nearest dollar.

Do not enter a negative number. If any line item is a negative number, enter "0" on that line.

Add lines (11) through (20) and enter the amount in Box C = Box C Total Business Expenses $ 

Subtract Box C from Box B and enter the amount in Box D = Box D Remaining Monthly Income $ 

Catalog Number 55897B

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Form 433-B (OIC) (Rev. 3-2017)
Section 5 — Calculate Your Minimum Offer Amount

The next steps calculate your minimum offer amount. The amount of time you take to pay your offer in full will affect your minimum offer amount. Paying over a shorter period of time will result in a smaller minimum offer amount.

If you will pay your offer in 5 or fewer payments within 5 months or less, multiply "Remaining Monthly Income" (Box D) by 12 to get "Future Remaining Income." Do not enter a number less than zero.

Note: The multipliers below (12 and 24) and the calculated offer amount do not apply if IRS determines you have the ability to pay your tax debt in full within the legal period to collect.

Round to the nearest whole dollar.

<table>
<thead>
<tr>
<th>Enter the total from Box D</th>
<th>X 12 =</th>
<th>Box E Future Remaining Income</th>
</tr>
</thead>
<tbody>
<tr>
<td>$</td>
<td></td>
<td>$</td>
</tr>
</tbody>
</table>

If you will pay your offer in 6 to 24 months, multiply "Remaining Monthly Income" (Box D) by 24 to get "Future Remaining Income". Do not enter a number less than zero.

<table>
<thead>
<tr>
<th>Enter the total from Box D</th>
<th>X 24 =</th>
<th>Box F Future Remaining Income</th>
</tr>
</thead>
<tbody>
<tr>
<td>$</td>
<td></td>
<td>$</td>
</tr>
</tbody>
</table>

Determine your minimum offer amount by adding the total available assets from Box A to the amount in either Box E or Box F. Your offer amount must be more than zero.

<table>
<thead>
<tr>
<th>Enter the amount from Box A</th>
<th>+</th>
<th>Enter the amount from either Box E or Box F</th>
<th>=</th>
<th>Offer Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>$</td>
<td></td>
<td>$</td>
<td></td>
<td>$</td>
</tr>
</tbody>
</table>

You must offer an amount more than $0.

*You may exclude any equity in income producing assets shown in Section 2 of this form.

Section 6 — Other Information

Additional information IRS needs to consider settlement of your tax debt. If this business is currently in a bankruptcy proceeding, the business is not eligible to apply for an offer.

Is the business currently in bankruptcy?

☐ Yes ☐ No

Has the business ever filed bankruptcy?

☐ Yes ☐ No

If yes, provide:

Date Filed (mm/dd/yyyy) Date Dismissed or Discharged (mm/dd/yyyy)

Petition No. Location Filed

Does this business have other business affiliations (e.g., subsidiary or parent companies)?

☐ Yes ☐ No

If yes, list the Name and Employer Identification Number:

Do any related parties (e.g., partners, officers, employees) owe money to the business?

☐ Yes ☐ No

Is the business currently, or in the past, a party to a lawsuit?

☐ Yes ☐ No

If yes, date the lawsuit was resolved:

Are you or have you been party to any lawsuits involving the IRS/United States (including any suits regarding tax matters)?

☐ Yes ☐ No

If yes and the suit included tax debt, provide the types of tax and periods involved.

In the past 10 years, has the business transferred any assets for less than their full value?

☐ Yes ☐ No

If yes, provide date, value, and type of asset transferred:
In the past 3 years have you transferred any real property (land, house, etc.)?

☐ Yes  ☐ No  
If yes, list the type of property, value, and date of the transfer.

Has the business been located outside the U.S. for 6 months or longer in the past 10 years?

☐ Yes  ☐ No

Do you have any assets or own any real property outside the U.S.?

☐ Yes  ☐ No
If yes, please provide description, location, and value.

Does the business have any funds being held in trust by a third party?

☐ Yes  ☐ No  
If yes, how much $ __________ Where: ________________________________

Does the business have any lines of credit?

☐ Yes  ☐ No  
If yes, credit limit $ __________ Amount owed $ __________
What property secures the line of credit? ________________________________

Section 7  
Signatures

Under penalties of perjury, I declare that I have examined this offer, including accompanying documents, and to the best of my knowledge it is true, correct, and complete.

<table>
<thead>
<tr>
<th>Signature of Taxpayer</th>
<th>Title</th>
<th>Date (mm/dd/yyyy)</th>
</tr>
</thead>
</table>

Remember to include all applicable attachments from list below.

☐ A current Profit and Loss statement covering at least the most recent 6–12 month period, if appropriate.

☐ Copies of the three most recent statements for each bank, investment, and retirement account

☐ If an asset is used as collateral on a loan, include copies of the most recent statement from lender(s) on loans, monthly payments, loan payoffs, and balances.

☐ Copies of the most recent statement of outstanding notes receivable.

☐ Copies of the most recent statements from lenders on loans, mortgages (including second mortgages), monthly payments, loan payoffs, and balances.

☐ Copies of relevant supporting documentation of the special circumstances described in the "Explanation of Circumstances" on Form 656, if applicable.

☐ Attach a Form 2848, Power of Attorney, if you would like your attorney, CPA, or enrolled agent to represent you and you do not have a current form on file with the IRS. Make sure the current tax year is included.

☐ Completed and signed Form 656
**Form 656**

(Rev. March 2017)

Department of the Treasury — Internal Revenue Service

**Offer in Compromise**

**To:** Commissioner of Internal Revenue Service

In the following agreement, the pronoun "we" may be assumed in place of "I" when there are joint liabilities and both parties are signing this agreement.

I submit this offer to compromise the tax liabilities plus any interest, penalties, additions to tax, and additional amounts required by law for the tax type and period(s) marked in Section 2 or Section 3 below.

Did you use the Pre-Qualifier tool located on our website at [http://irs.treasury.gov/oic_pre_qualifier/](http://irs.treasury.gov/oic_pre_qualifier/) prior to filling out this form?

- Yes
- No

**Note:** The use of the Pre-Qualifier tool is not mandatory before sending in your offer. However, it is recommended.

Include the $186 application fee and initial payment (personal check, cashier’s check, or money order) with your Form 656. You must also include the completed Form 433-A (OIC) and/or 433-B (OIC) and supporting documentation. You should fill out either Section 1 or Section 2, but not both, depending on the tax debt you are offering to compromise.

### Section 1 Individual Information (Form 1040 filers)

If you are a 1040 filer, an individual with personal liability for Excise tax, individual responsible for Trust Fund Recovery Penalty, self-employed individual, individual personally responsible for partnership liabilities, and/or an individual who operates as a single member LLC or a disregarded entity taxed as a sole proprietorship you should fill out Section 1. You must also include all required documentation including the Form 433-A (OIC), the $186 application fee, and initial payment.

<table>
<thead>
<tr>
<th>Your First Name, Middle Initial, Last Name</th>
<th>Social Security Number (SSN)</th>
</tr>
</thead>
<tbody>
<tr>
<td>If a Joint Offer, Spouse’s First Name, Middle Initial, Last Name</td>
<td>Social Security Number (SSN)</td>
</tr>
</tbody>
</table>

Your Physical Home Address (Street, City, State, ZIP Code)

Your Home Mailing Address (if different from above or Post Office Box number)

Is this a new address?

- Yes
- No

If yes, would you like us to update our records to this address?

- Yes
- No

Employer Identification Number

| Individual Tax Periods |

If Your Offer is for Individual Tax Debt Only

- 1040 Income Tax-Year(s)
- Trust Fund Recovery Penalty as a responsible person of (enter business name) for failure to pay withholding and Federal Insurance Contributions Act taxes (Social Security taxes), for period(s) ending
- 941 Employer’s Quarterly Federal Tax Return - Quarterly period(s)
- 940 Employer’s Annual Federal Unemployment (FUTA) Tax Return - Year(s)
- Other Federal Tax(es) [specify type(s) and period(s)]

**Note:** If you need more space, use attachment and title it “Attachment to Form 656 dated __________.” Make sure to sign and date the attachment.

Catalog Number 16728N

www.irs.gov

Form 656 (Rev. 3-2017)
Low-Income Certification  *(Individuals and Sole Proprietors Only)*

Check this box if your household's gross monthly income is equal to or less than the monthly income shown in the table below.

<table>
<thead>
<tr>
<th>Size of family unit</th>
<th>48 contiguous states and D.C.</th>
<th>Hawaii</th>
<th>Alaska</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$2,513</td>
<td>$2,888</td>
<td>$3,138</td>
</tr>
<tr>
<td>2</td>
<td>$3,383</td>
<td>$3,890</td>
<td>$4,227</td>
</tr>
<tr>
<td>3</td>
<td>$4,254</td>
<td>$4,892</td>
<td>$5,317</td>
</tr>
<tr>
<td>4</td>
<td>$5,125</td>
<td>$5,894</td>
<td>$6,406</td>
</tr>
<tr>
<td>5</td>
<td>$5,996</td>
<td>$6,896</td>
<td>$7,496</td>
</tr>
<tr>
<td>6</td>
<td>$6,867</td>
<td>$7,898</td>
<td>$8,585</td>
</tr>
<tr>
<td>7</td>
<td>$7,738</td>
<td>$8,900</td>
<td>$9,675</td>
</tr>
<tr>
<td>8</td>
<td>$8,608</td>
<td>$9,902</td>
<td>$10,765</td>
</tr>
<tr>
<td>For each additional person, add</td>
<td>$871</td>
<td>$1,002</td>
<td>$1,090</td>
</tr>
</tbody>
</table>

Section 2  **Business Information (Form 1120, 1065, etc., filers)**

If your business is a Corporation, Partnership, LLC, or LLP and you want to compromise those tax debts, you must complete this section. You must also include all required documentation including the Form 433-B (OIC), and a separate $186 application fee, and initial payment.

**Business Name**

**Business Physical Address (Street, City, State, ZIP Code)**

**Business Mailing Address (Street, City, State, ZIP Code)**

**Employer Identification Number (EIN)**

**Name and Title of Primary Contact**

**Telephone Number**

### Business Tax Periods

**If Your Offer is for Business Tax Debt Only**

- 1120 Income Tax-Year(s)
- 941 Employer's Quarterly Federal Tax Return - Quarterly period(s)
- 940 Employer's Annual Federal Unemployment (FUTA) Tax Return - Year(s)
- Other Federal Tax(es) [specify type(s) and period(s)]

*Note: If you need more space, use attachment and title it “Attachment to Form 656 dated " Make sure to sign and date the attachment.*

Section 3  **Reason for Offer**

-  **Doubt as to Collectibility** - I do not have enough in assets and income to pay the full amount.
-  **Exceptional Circumstances (Effective Tax Administration)** - I owe this amount and have enough assets to pay the full amount, but due to my exceptional circumstances, requiring full payment would cause an economic hardship or would be unfair and inequitable. I am submitting a written narrative explaining my circumstances.

**Explanation of Circumstances (Add additional pages, if needed)** – The IRS understands that there are unplanned events or special circumstances, such as serious illness, where paying the full amount or the minimum offer amount might impair your ability to provide for yourself and your family. If this is the case and you can provide documentation to prove your situation, then your offer may be accepted despite your financial profile. Describe your situation below and attach appropriate documents to this offer application.
Section 4—Tax Collection Issues

**Payment Terms**

Check one of the payment options below to indicate how long it will take you to pay your offer in full. You must offer more than $0. The offer amount should be in whole dollars only.

<table>
<thead>
<tr>
<th>Lump Sum Cash</th>
</tr>
</thead>
<tbody>
<tr>
<td>Check here if you will pay your offer in 5 or fewer payments within 5 or fewer months from the date of acceptance:</td>
</tr>
<tr>
<td>Enclose a check for 20% of the offer amount (waived if you are an individual or sole proprietor and met the requirements for Low Income Certification) and fill in the amount(s) of your future payment(s).</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Total Offer Amount</th>
<th>-</th>
<th>20% Initial Payment</th>
<th>=</th>
<th>Remaining Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>$</td>
<td>-</td>
<td>$</td>
<td>=</td>
<td>$</td>
</tr>
</tbody>
</table>

You may pay the remaining balance in one payment after acceptance of the offer or up to five payments, but cannot exceed 5 months.

<table>
<thead>
<tr>
<th>Amount of payment</th>
<th>payable within</th>
<th>Month after acceptance</th>
</tr>
</thead>
<tbody>
<tr>
<td>$</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>$</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>$</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>$</td>
<td>4</td>
<td></td>
</tr>
<tr>
<td>$</td>
<td>5</td>
<td></td>
</tr>
</tbody>
</table>

**Periodic Payment**

Check here if you will pay your offer in full in 6 to 24 months.

Enter the amount of your offer $.

Note: The total amount must equal all of the proposed payments including the first and last payments.

Enclose a check for the first month’s payment.

$ is included with this offer then $ will be sent in on the day of each month thereafter for a total of months with a final payment of $ to be paid on the day of the month.

Note: The total months may not exceed a total of 24 months, including the first payment. Your first payment is considered to be month; therefore, the remainder of the payments must be made within 23 months for a total of 24.

You must continue to make these monthly payments while the IRS is considering the offer (waived if you met the requirements for Low Income Certification). Failure to make regular monthly payments will cause your offer to be returned with no appeal rights.

**IRS Use Only**

Attached is an addendum dated (insert date) setting forth the amended offer amount and payment terms.

Section 5—Designation of Payment, Electronic Federal Transfer Payment System (EFTPS), and Deposit

**Designation of Payment**

If you want your payment to be applied to a specific tax year and a specific tax debt, such as a Trust Fund Recovery Penalty, please tell us the tax year/quarter. If you do not designate a preference, we will apply any money you send to the government's best interest. If you want to designate any payments not included with this offer, you must designate a preference for each payment at the time the payment is made. However, you cannot designate the $186 application fee or any payment after the IRS accepts the offer.

Note: Payments submitted with your offer cannot be designated as estimated tax payments for a current or past tax year.

**Electronic Federal Transfer Payment System (EFTPS)**

Did you make your payment through the Electronic Federal Tax Payment System (EFTPS)?

Yes ☐ No ☐

If yes, provide the amount of your payment(s) $, the date paid, and the 15 digit Electronic Funds Transfer (EFT) Number.

Note: Any initial payments paid through the EFTPS system must be made the same date your offer is mailed.

**Deposit**

If you are paying more than the initial payment with your offer and you want any part of that payment treated as a deposit, check the box below and insert the amount.

☐ My payment of $ includes the $186 application fee and $ for my first month's payment. I am requesting the additional amount of $ be held as a deposit.

If your offer is rejected, returned, or withdrawn please check one of the boxes below and let us know what you would like us to do with your deposit.

☐ Return it to you (Initial here) ☐ Apply it to your tax debt (Initial here)

CAUTION: Do NOT designate the amounts sent in with your offer to cover the initial payment and application fee as “deposits.” Doing so will result in the return of your offer with no right to appeal.
Chapter 4—Tax Collection Issues

Section 6  Source of Funds, Making Your Payment, Filing Requirements, and Tax Payment Requirements

Source of Funds
Tell us where you will obtain the funds to pay your offer. You may consider borrowing from friends and/or family, taking out a loan, or selling assets.

Making Your Payment
Include separate checks for the payment and application fee.

Make checks payable to the "United States Treasury" and attach to the front of your Form 656, Offer in Compromise. All payments must be in U.S. dollars. Do not send cash. Send a separate application fee with each offer; do not combine it with any other tax payments, as this may delay processing of your offer. You may also make payments through the Electronic Federal Tax Payment System (EFTPS). Your offer will be returned to you if the application fee and the required payment are not included, or if your check is returned for insufficient funds.

Filing Requirements
☐ I have filed all required tax returns.
☐ I was not required to file a tax return for the following years:

Note: Do not include original tax returns with your offer. You must either electronically file your tax return or mail it to the appropriate IRS processing office before sending in your offer.

Tax Payment Requirements (check all that apply)
☐ I have made all required estimated tax payments for the current tax year.
☐ I am not required to make any estimated tax payments for the current tax year.
☐ I have made all required federal tax deposits for the current quarter.
☐ I am not required to make any federal tax deposits for the current quarter.

Section 7  Offer Terms
By submitting this offer, I have read, understand and agree to the following terms and conditions:

Terms, Conditions, and Legal Agreement
a) I request that the IRS accept the offer amount listed in this offer application as payment of my outstanding tax debt (including interest, penalties, and any additional amounts required by law) as of the date listed on this form. I authorize the IRS to amend Section 1 and/or Section 2 if I failed to list any of my assessed tax debt or tax debt assessed before acceptance of my offer. I also authorize the IRS to amend Section 1 and/or Section 2 by removing any tax years on which there is currently no outstanding liability. I understand that my offer will be accepted, by law, unless IRS notifies me otherwise, in writing, within 24 months of the date my offer was received by IRS. I also understand that if any tax debt that is included in the offer is in dispute in any judicial proceeding it/they will not be included in determining the expiration of the 24-month period.

IRS will keep my payments, fees, and some refunds.
b) I voluntarily submit the payments made on this offer and understand that they will not be returned even if I withdraw the offer or the IRS rejects or returns the offer. Unless I designate how to apply each required payment in Section 5, the IRS will apply my payment in the best interest of the government, choosing which tax years and tax debts to pay off. The IRS will also keep my application fee unless the offer is not accepted for processing.

c) The IRS will keep any refund, including interest, that I might be due for tax periods extending through the calendar year in which the IRS accepts my offer. I cannot designate that the refund be applied to estimated tax payments for the following year or the accepted offer amount. If I receive a refund after I submit this offer for any tax period extending through the calendar year in which the IRS accepts my offer, I will return the refund within 30 days of notification. The refund offset does not apply to offers accepted under the provisions of Effective Tax Administration or Doubt as to Collectibility with special circumstances based on public policy/equity considerations.

d) I understand that the amount I am offering may not include part or all of an expected or current tax refund, money already paid, funds attached by any collection action, or anticipated benefits from a capital or net operating loss.

e) The IRS will keep any monies it has collected prior to this offer. Under section § 6331(a) the IRS may levy up to the time that the IRS official signs and acknowledges my offer as pending, which is accepted for processing and the IRS may keep any proceeds arising from such a levy. No levy will be issued on individual shared responsibility payments. However, if the IRS served a continuous levy on wages, salary, or certain federal payments under sections 6331(e) or (h), then the IRS could choose to either retain or release the levy.

f) The IRS will keep any payments that I make related to this offer. I agree that any funds submitted with this offer will be treated as a payment unless I checked the box to treat any amount more than the required initial payment as a deposit. Only amounts that exceed the mandatory payments can be treated as a deposit. I also agree that any funds submitted with periodic payments made after the submission of this offer and prior to the acceptance, rejection, or return of this offer will be treated as payments, unless I identify the amount more than the required payment as a deposit on the check submitted with the corresponding periodic payment. A deposit will be returned if the offer is rejected, returned, or withdrawn. I understand that the IRS will not pay interest on any deposit.

g) If my offer is accepted and my final payment is more than the agreed amount by $50 or less, the IRS will not return the difference, but will apply the entire payment to my tax debt. If my final payment exceeds the agreed amount by more than $50, the IRS will return the excess payment to me.
Chapter 4—Tax Collection Issues

<table>
<thead>
<tr>
<th>Section 7 (Continued)</th>
<th>Offer Terms</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Pending status of an offer and right to appeal</strong></td>
<td>h) Once an authorized IRS official signs this form, my offer is considered pending as of that signature date and it remains pending until the IRS accepts, rejects, returns, or I withdraw my offer. An offer is also considered pending for 30 days after any rejection of my offer by the IRS, and during the time that any rejection of my offer is being considered by the Appeals Office. An offer will be considered withdrawn when the IRS receives my written notification of withdrawal by personal delivery or certified mail or when I inform the IRS of my withdrawal by other means and the IRS acknowledges in writing my intent to withdraw the offer.</td>
</tr>
<tr>
<td><strong>I must comply with my future tax obligations and understand I remain liable for the full amount of my tax debt until all terms and conditions of this offer have been met.</strong></td>
<td>i) I waive the right to an Appeals hearing if I do not request a hearing in writing within 30 days of the date the IRS notifies me of the decision to reject the offer.</td>
</tr>
<tr>
<td><strong>I understand what will happen if I fail to meet the terms of my offer (e.g., default).</strong></td>
<td>j) I will comply with all provisions of the internal revenue laws, including requirements to timely file tax returns and timely pay taxes for the five year period beginning with the date of acceptance of this offer and ending through the fifth year, including any extensions to file and pay. I agree to promptly pay any liabilities assessed after acceptance of this offer for tax years ending prior to acceptance of this offer that were not otherwise identified in Section 1 or Section 2 of this agreement. I also understand that during the five year period I cannot request an installment agreement for unpaid taxes incurred before or after the accepted offer. If this is an offer being submitted for joint tax debt, and one of us does not comply with future obligations, only the non-compliant taxpayer will be in default of this agreement. An accepted offer will not be defaulted solely due to the assessment of an individual shared responsibility payment. I also understand that during the five year period I cannot request an installment agreement for unpaid taxes incurred before or after the accepted offer.</td>
</tr>
<tr>
<td><strong>I agree to waive time limits provided by law.</strong></td>
<td>k) I agree that I will remain liable for the full amount of the tax liability, accrued penalties and interest, until I have met all of the terms and conditions of this offer. Penalty and interest will continue to accrue until all payment terms of the offer have been met. If I file for bankruptcy before the terms and conditions of the offer are met, I agree that the IRS may file a claim for the full amount of the tax liability, accrued penalties and interest, and that any claim the IRS files in the bankruptcy proceeding will be a tax claim.</td>
</tr>
<tr>
<td><strong>I understand the IRS may file a Notice of Federal Tax Lien on my property.</strong></td>
<td>l) Once the IRS accepts my offer in writing, I have no right to challenge the tax debt(s) in court or by filing a refund claim or refund suit for any liability or period listed in Section 1 or Section 2, even if I default the terms of the accepted offer.</td>
</tr>
<tr>
<td><strong>Correction Agreement</strong></td>
<td>m) If I fail to meet any of the terms of this offer, the IRS may revoke the certificate of release of federal tax lien and file a new notice of federal tax lien; levy or sue me to collect any amount ranging from one or more missed payments to the original amount of the tax debt (less payments made) plus penalties and interest that have accrued from the time the underlying tax liability arose. The IRS will continue to add interest, as required by Section §6601 of the Internal Revenue Code, on the amount the IRS determines is due after default. Shared responsibility payments are excluded from levy.</td>
</tr>
<tr>
<td><strong>I authorize the IRS to contact relevant third parties in order to process my offer.</strong></td>
<td>n) To have my offer considered, I agree to the extension of the time limit provided by law to assess my tax debt (statutory period of assessment). I agree that the date by which the IRS must assess my tax debt will now be the date by which my debt must currently be assessed plus the period of time my offer is pending plus one additional year if the IRS rejects, returns, or terminates my offer or I withdraw it. (Paragraph (h) of this section defines pending and withdrawal.) I understand that I have the right not to waive the statutory period of assessment or to limit the waiver to a certain length or certain periods or issues. I understand, however, that the IRS may not consider my offer if I refuse to waive the statutory period of assessment or if I provide only a limited waiver. I also understand that the statutory period for collecting my tax debt will be suspended during the time my offer is pending with the IRS, for 30 days after any rejection of my offer by the IRS, and during the time that any rejection of my offer is being considered by the Appeals Office.</td>
</tr>
<tr>
<td><strong>I am submitting an offer as an individual for a joint liability.</strong></td>
<td>o) The IRS may file a Notice of Federal Tax Lien during consideration of the offer. The IRS may file a Notice of Federal Tax Lien to protect the Government’s interest on offers that will be paid over time. This tax lien will be released 30 days after the payment terms have been satisfied and the payment has been verified. If the offer is accepted, the tax lien will be released within 30 days of when the payment terms have been satisfied and the payment has been verified. The time it takes to transfer funds to the IRS from commercial institutions varies based on the form of payment. The IRS will not file a Notice of Federal Tax Lien on any individual shared responsibility debt.</td>
</tr>
</tbody>
</table>

Catalog Number 16728N

www.irs.gov

Form 656 (Rev. 3-2017)
Shared Responsibility Payment

(s) If your offer includes any shared responsibility payment (SRP) amount that you owe for not having minimum essential health coverage for you and, if applicable, your dependents per Internal Revenue Code Section 5000A - Individual shared responsibility payment, it is not subject to penalties, except applicable bad check penalty, or to lien and levy enforcement actions. However, interest will continue to accrue until you pay the total SRP balance due. We may apply your federal tax refunds to the SRP amount that you owe until it is paid in full.

Section 8

Signatures

Under penalties of perjury, I declare that I have examined this offer, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct and complete.

Signature of Taxpayer/Corporation Name

Phone Number

Today's Date (mm/dd/yyyy)

☐ By checking this box you are authorizing the IRS to contact you at the telephone number listed above and leave detailed messages concerning this offer on your voice mail or answering machine.

Signature of Spouse/Authorized Corporate Officer

Phone Number

Today's Date (mm/dd/yyyy)

☐ By checking this box you are authorizing the IRS to contact you at the telephone number listed above and leave detailed messages concerning this offer on your voice mail or answering machine.

Section 9

Paid Preparer Use Only

Signature of Preparer

Phone Number

Today's Date (mm/dd/yyyy)

☐ By checking this box you are authorizing the IRS to contact you at the telephone number listed above and leave detailed messages concerning this offer on your voice mail or answering machine.

Name of Paid Preparer

Preparer's CAF no. or PTIN

Firm's Name (or yours if self-employed), Address, and ZIP Code

If you would like to have someone represent you during the offer investigation, include a valid, signed Form 2848 or 8821 with this application or a copy of a previously filed form. You should also include the current tax year.

Privacy Act Statement

We ask for the information on this form to carry out the internal revenue laws of the United States. Our authority to request this information is section § 7801 of the Internal Revenue Code.

Our purpose for requesting the information is to determine if it is in the best interests of the IRS to accept an offer. You are not required to make an offer; however, if you choose to do so, you must provide all of the taxpayer information requested. Failure to provide all of the information may prevent us from processing your request.

If you are a paid preparer and you prepared the Form 656 for the taxpayer submitting an offer, we request that you complete and sign Section 9 on Form 656, and provide identifying information. Providing this information is voluntary. This information will be used to administer and enforce the internal revenue laws of the United States and may be used to regulate practice before the Internal Revenue Service for those persons subject to Treasury Department Circular No. 230, Regulations Governing the Practice of Attorneys, Certified Public Accountants, Enrolled Agents, Enrolled Actuaries, and Appraisers before the Internal Revenue Service. Information on this form may be disclosed to the Department of Justice for civil and criminal litigation. We may also disclose this information to cities, states and the District of Columbia for use in administering their tax laws and to combat terrorism. Providing false or fraudulent information on this form may subject you to criminal prosecution and penalties.
Chapter 4—Tax Collection Issues

APPLICATION CHECKLIST
Review the entire application using the Application Checklist below. Include this checklist with your application.

**Forms 433-A (OIC), 433-B (OIC), and 656**

- Did you complete all fields and sign all forms?
- Did you make an offer amount that is equal to the offer amount calculated on the Form 433-A (OIC) or Form 433-B (OIC)? If not, did you describe the special circumstances that are leading you to offer less than the minimum in the “Explanation of Circumstances” Section 3 of Form 656, and did you provide supporting documentation of the special circumstances?
- Have you filed all required tax returns and received a bill or notice of balance due?
- Did you select a payment option on Form 656?
- Did you sign and attach the Form 433-A (OIC), if applicable?
- Did you sign and attach the Form 433-B (OIC), if applicable?
- Did you sign and attach the Form 656?
- If you are making an offer that includes business and individual tax debts, did you prepare a separate Form 656 package (including separate financial statements, supporting documentation, application fee, and initial payment)?

**Supporting documentation and additional forms**

- Did you include photocopies of all required supporting documentation?
- If you want a third party to represent you during the offer process, did you include a Form 2848 or Form 8821 unless one is already on file? Does it include the current tax year?
- Did you provide a letter of testamentary or other verification of person(s) authorized to act on behalf of the estate or deceased individual?

**Payment**

- Did you include a check or money order made payable to the “United States Treasury” for the initial payment? (Waived if you meet Low Income Certification guidelines—see Form 656.)
- Did you include a separate check or money order made payable to the “United States Treasury” for the $186 application fee? (Waived if you meet Low Income Certification guidelines—see Form 656.)

**Mail your application package to the appropriate IRS facility**

Mail your application package to the appropriate IRS processing office for your state. You may wish to send it by Certified Mail so you have a record of the date it was mailed.

**Mail your application to:**

- **Memphis IRS Center COIC Unit**
  - P.O. Box 30803, AMC
  - Memphis, TN 38130-0803
  - 1-866-790-7117

- **Brookhaven IRS Center COIC Unit**
  - P.O. Box 9007
  - Holtsville, NY 11742-9007
  - 1-866-611-6191

If you reside in:

- AK, AL, AR, AZ, CO, FL, GA, HI, ID, KY, LA, MS, NC, NM, NV, OK, OR, TN, TX, UT, WA, WI
- CA, CT, DE, IA, IL, IN, KS, MA, MD, ME, MI, MN, MO, MT, ND, NE, NH, NJ, NY, OH, PA, RI, SC, SD, VT, VA, WY, WV, DC, PR, or a foreign address
Chapter 4—Tax Collection Issues

Tax Information Authorization and Power of Attorney for Representation

• Please print. • Use only blue or black ink. • See additional information on the back.

Date received

<table>
<thead>
<tr>
<th>Taxpayer name</th>
<th>Identifying number (SSN, BIN, FEIN, etc.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Spouse’s name, if joint return</td>
<td>Spouse’s identifying number (SSN, etc.)</td>
</tr>
</tbody>
</table>

Address City State ZIP code

Check only one:

☐ Tax Information Authorization: Checking this box allows the department to disclose your confidential tax information to your designee. You may designate a person, agency, firm, or organization.

☐ Power of Attorney for Representation: Check this box if you want a person to “represent” you. This means the person may receive confidential information and may make decisions on your behalf. The person you designate must meet the qualifications listed on the back of this form.

For ☐ All tax years, or ☐ Specific tax years: ____________________________

I hereby appoint the following person as designee or authorized representative:

Name Phone Fax

( ) ( )

Mailing address City State ZIP code

Representative’s title and Oregon license number or relationship to taxpayer

If out-of-state CPA, sign here attesting you meet the requirements to practice in Oregon (see instructions)

The above named is authorized to receive my confidential tax information and/or represent me before the Oregon Department of Revenue for:

☐ All tax matters, or

☐ Specific tax matters. Enter tax program name(s): ______________________________________________________________________

Signature of taxpayer(s)

☐ I acknowledge the following provision: Actions taken by an authorized representative are binding, even if the representative is not an attorney. Proceedings cannot later be declared legally defective because the representative was not an attorney.

☐ Corporate officers, partners, fiduciaries, or other qualified persons signing on behalf of the taxpayer(s): By signing, I also certify that I have the authority to execute this form.

☐ If a tax matter concerns a joint return, both spouses must sign if joint representation is requested. Taxpayers filing jointly may authorize separate representatives.

Signature Print name Date

X

Title (if applicable) Daytime phone

( )

Spouse (if joint representation) Print name Date

X

Note: This authorization form automatically revokes and replaces all earlier tax authorizations and/or all earlier powers of attorney on file with the Oregon Department of Revenue for the same tax matters and years or periods covered by this form. If you do not want to revoke a prior authorization, initial here ______.

Attach a copy of any other tax information authorization or power of attorney you want to remain in effect.

Complete the following, if known (for routing purposes only):

Revenue employee: ____________________________
Division/Section: ____________________________
Phone/Fax: ____________________________

Send to: Oregon Department of Revenue
955 Center St NE
Salem OR 97301-2555

Visit www.oregon.gov/dor to complete this form using Revenue Online.

If this tax information authorization or power of attorney form is not signed, it will be returned.

Power of attorney forms submitted with Revenue Online will be signed electronically.

Broadbrush Taxation: Tax Law for the Non–Tax Attorney
Chapter 4—Tax Collection Issues

Additional information
This form is used for two purposes:

- **Tax information disclosure authorization.** You authorize the department to disclose your confidential tax information to another person. This person will not receive original notices we send to you.

- **Power of attorney for representation.** You authorize another person to represent you and act on your behalf. The person must meet the qualifications below. Unless you specify differently, this person will have full power to do all things you might do, with as much binding effect, including, but not limited to: providing information; preparing, signing, executing, filing, and inspecting returns and reports; and executing statute of limitation extensions and closing agreements.

This form is effective on the date signed. Authorization terminates when the department receives written revocation notice or a new form is executed (unless the space provided on the front is initialed indicating that prior forms are still valid).

Unless the appointed representative has a fiduciary relationship to the taxpayer (such as personal representative, trustee, guardian, conservator), original Notices of Deficiency or Assessment will be mailed to the taxpayer as required by law. A copy will be provided to the appointed representative when requested.

For corporations, “taxpayer” as used on this form, must be the corporation that is subject to Oregon tax. List fiscal years by year end date.

Qualifications to represent taxpayer(s) before Department of Revenue
Under Oregon Revised Statute (ORS) 305.230 and Oregon Administrative Rule (OAR) 150-305.230, a person must meet one of the following qualifications in order to represent you before the Department of Revenue.

1. For all tax programs:
   a. An adult immediate family member (spouse, parent, child, or sibling).
   b. An attorney qualified to practice law in Oregon.
   c. A certified public accountant (CPA) or public accountant (PA) qualified to practice public accountancy in Oregon, and their employees.
   d. An IRS enrolled agent (EA) qualified to prepare tax returns in Oregon.
   e. A designated employee of the taxpayer.
   f. An officer or full-time employee of a corporation (including a parent, subsidiary, or other affiliated corporation), association, or organized group for that entity.
   g. A full-time employee of a trust, receivership, guardianship, or estate for that entity.
   h. An individual outside the United States if representation takes place outside the United States.

2. For income tax issues:
   a. All those listed in (1); plus
   b. A licensed tax consultant (LTC) or licensed tax preparer (LTP) licensed by the Oregon State Board of Tax Practitioners.

3. For ad valorem property tax issues:
   a. All those listed in (1); plus
   b. An Oregon licensed real estate broker or a principal real estate broker; or
   c. An Oregon certified, licensed, or registered appraiser; or
   d. An authorized agent for designated utilities and companies assessed by the department under ORS 308.505 through 308.665 and ORS 308.805 through 308.820.

4. For forestland and timber tax issues:
   a. All those listed in (1), (2), and (3)(b) and (c); plus
   b. A consulting forester.

An individual who prepares and either signs your tax return or who is not required to sign your tax return (by the instructions or by rule), may represent you during an audit of that return. That individual may not represent you for any other purpose unless they meet one of the qualifications listed above.

Generally, declarations for representation in cases appealed beyond the Department of Revenue must be in writing to the Tax Court Magistrate. A person recognized by a Tax Court Magistrate will be recognized as your representative by the department.

Tax matters partners and S corporation shareholders. See OARs 150-305.242(2) and (5) and 150-305.230 for additional information. Include the partnership or S corporation name in the taxpayer name area.

Out-of-state attorneys and CPAs
Attorneys may contact the Oregon State Bar for information on practicing in Oregon. If your out-of-state representative receives authorization to practice in Oregon, attach proof to this form.

CPAs may practice in Oregon if they meet the following substantial equivalency requirements of ORS 673.010:
1. Licensed in another state;
2. Have an accredited baccalaureate degree with at least 150 semester hours of college education;
3. Passed the Uniform CPA exam; and
4. Have a minimum of one year experience.

Have questions? Need help?

**General tax information**
www.oregon.gov/dor
Salem..........................(503) 378-4988
Toll-free from an Oregon prefix.............. 1 (800) 356-4222

**Asistencia en español:**
En Salem o fuera de Oregon ...............(503) 378-4988
Gratis de prefijo de Oregon .............. 1 (800) 356-4222

**TTY (hearing or speech impaired; machine only):**
Salem area or outside Oregon ..........(503) 945-8617
Toll-free from an Oregon prefix......... 1 (800) 886-7204

**Americans with Disabilities Act (ADA):** Call one of the help numbers above for information in alternative formats.
Form OR-SFC
Statement of Financial Condition

Complete all sections of this form. If you don’t complete all sections of this form, we cannot process it, which will continue collection activity. This may result in garnishment, lien, or assignment of debt to a private collection agency.

- Three months of current bank statements—personal and business (if applicable).
- Three months of current pay stubs (if applicable).
- Three months of profit and loss statements (for businesses only).
- All household income.
- Additional sheets, as needed, for additional information.

☐ Check here if applying for suspended collection status. For suspended collection status qualifications, visit www.oregon.gov/dor and search for “Suspended collection.”

☐ Check here if applying for a wage garnishment modification.

Section 1. Personal information

<table>
<thead>
<tr>
<th>Your first name</th>
<th>MI</th>
<th>Last name</th>
<th>Your Social Security number</th>
<th>Your date of birth</th>
</tr>
</thead>
<tbody>
<tr>
<td>Spouse/RDP’s first name</td>
<td>MI</td>
<td>Last name</td>
<td>Spouse/RDP’s Social Security number</td>
<td>Spouse/RDP’s date of birth</td>
</tr>
<tr>
<td>Spouse/RDP’s other names or aliases used</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Your cell phone</th>
<th>Your driver license number</th>
<th>State</th>
<th>Spouse/RDP’s cell phone</th>
<th>Spouse/RDP’s driver license no.</th>
<th>State</th>
</tr>
</thead>
<tbody>
<tr>
<td>Your email</td>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Dependent’s name (living with you)</th>
<th>Date of birth</th>
<th>Social Security number</th>
<th>Relationship</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dependent’s name (living with you)</td>
<td>Date of birth</td>
<td>Social Security number</td>
<td>Relationship</td>
</tr>
<tr>
<td>Dependent’s name (living with you)</td>
<td>Date of birth</td>
<td>Social Security number</td>
<td>Relationship</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Your current physical address</th>
<th>City</th>
<th>State</th>
<th>ZIP code</th>
<th>County</th>
<th>Your home phone</th>
</tr>
</thead>
<tbody>
<tr>
<td>Your mailing address (if different from above)</td>
<td>City</td>
<td>State</td>
<td>ZIP code</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Name of your tax representative (CPA, attorney, enrolled agent)  
Fax number  
Phone

Address of your tax representative  
City | State | ZIP code

Section 2. Employment information (personal and business)

<table>
<thead>
<tr>
<th>Your employer or business name</th>
<th>Business phone</th>
<th>Payroll fax</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address</td>
<td>City</td>
<td>State</td>
</tr>
</tbody>
</table>

| Date hired: ____________________ | Occupation: ____________________ | Wage earner | Sole proprietor | Partner | Owner officer |
| Paid:  □ Weekly  □ Every other week  □ Monthly  □ Twice a month | Number of allowances claimed on Form W-4: ____________________ |
Section 2. (continued) Employment information (personal and business)

<table>
<thead>
<tr>
<th>Name and title</th>
<th>Effective date</th>
<th>Home address</th>
<th>Home phone</th>
<th>SSN</th>
<th>Code</th>
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<td>1 2 3 4</td>
</tr>
</tbody>
</table>

Date hired: ___________ Occupation: ___________________________  
☐ Wage earner  ☐ Sole proprietor  ☐ Partner  ☐ Owner officer

Paid: ☐ Weekly  ☐ Every other week  ☐ Monthly  ☐ Twice a month  Number of allowances claimed on Form W-4: ___________

If self-employed: List all responsible owner(s), partner(s), officer(s), major shareholder(s), etc.

Identify the major responsibilities of each by circling the codes that apply: 1 = Files returns; 2 = Pays taxes; 3 = Prefers creditors; 4 = Hires and fires

---

Section 3. General financial information (personal and business)

Bank accounts. Include IRA and retirement plans certificates of deposit, etc. For all accounts, attach copies of your last three bank statements. Attach additional pages as needed.

<table>
<thead>
<tr>
<th>Name of institution</th>
<th>Address</th>
<th>Type</th>
<th>Date opened</th>
<th>Account number</th>
<th>Balance</th>
</tr>
</thead>
<tbody>
<tr>
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</tbody>
</table>

**Total.** Enter this amount on line 2, Section 4 (asset and liability analysis) $ ___________

Safe deposit boxes (rented or accessed). Include location, box number, and contents. Attach additional pages as needed.

<table>
<thead>
<tr>
<th>Name of institution</th>
<th>Address</th>
<th>Box identification</th>
<th>Current value of assets</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</tbody>
</table>

**Total.** Enter this amount on line 3, Section 4 (asset and liability analysis) $ ___________

Vehicles. Attach supporting documentation of current payoff. Attach additional pages as needed, and vehicles paid in full.

<table>
<thead>
<tr>
<th>Year, make, model, license number</th>
<th>Lender/lien holder</th>
<th>Current market value</th>
<th>Current payoff</th>
<th>Available equity (cannot be less than -0-)</th>
</tr>
</thead>
<tbody>
<tr>
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</tbody>
</table>

**Total.** Enter this amount on line 4, section 4 (asset and liability analysis) $ ___________
**Section 3. (continued) General financial information (personal and business)**

**Personal property.** Include water craft, RVs, air craft, business equipment, and/or machinery. Attach additional pages as needed.

<table>
<thead>
<tr>
<th>Year, make, model, license number</th>
<th>Lender/lien holder</th>
<th>Current market value</th>
<th>Current payoff</th>
<th>Available equity (cannot be less than 0)</th>
</tr>
</thead>
<tbody>
<tr>
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</tbody>
</table>

**Total.** Enter this amount on line 6, section 4 (asset and liability analysis) ................................ $

**Life insurance.** Attach additional pages as needed.

<table>
<thead>
<tr>
<th>Name of insurance company</th>
<th>Agent’s name and phone</th>
<th>Policy number</th>
<th>Type</th>
<th>Face amount</th>
<th>Loan/cash surrender value</th>
</tr>
</thead>
<tbody>
<tr>
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</tbody>
</table>

**Total.** Enter this amount on line 7, section 4 (asset and liability analysis) ................................. $

**Securities.** Include stocks, bonds, mutual funds, money market funds, securities, 401(k), etc. Attach additional pages as needed.

<table>
<thead>
<tr>
<th>Type</th>
<th>Where located</th>
<th>Owner of record</th>
<th>Quantity or denomination</th>
<th>Current value</th>
</tr>
</thead>
<tbody>
<tr>
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</table>

**Total.** Enter this amount on line 8, section 4 (asset and liability analysis) ................................. $

**Real property.** Include a copy of the deed and a copy of homeowners/rental insurance policy with riders and supporting documentation of loan balance. Attach additional pages as needed.

A. Physical address

<table>
<thead>
<tr>
<th>Type</th>
<th>Mortgage lender’s name and address</th>
</tr>
</thead>
<tbody>
<tr>
<td>(single- or multi-family dwelling, lot, rental, etc.)</td>
<td></td>
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</tbody>
</table>

Parcel number: __________

How is title held: ___________________________ Purchase price: ________ Purchase date: __________

Current market value: ________________ Mortgage balance: ________________ Equity: ________________

B. Physical address

<table>
<thead>
<tr>
<th>Type</th>
<th>Mortgage lender’s name and address</th>
</tr>
</thead>
<tbody>
<tr>
<td>(single- or multi-family dwelling, lot, rental, etc.)</td>
<td></td>
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</tbody>
</table>

Parcel number: __________

How is title held: ___________________________ Purchase price: ________ Purchase date: __________

Current market value: ________________ Mortgage balance: ________________ Equity: ________________

C. Physical address

<table>
<thead>
<tr>
<th>Type</th>
<th>Mortgage lender’s name and address</th>
</tr>
</thead>
<tbody>
<tr>
<td>(single- or multi-family dwelling, lot, rental, etc.)</td>
<td></td>
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</tbody>
</table>

Parcel number: __________

How is title held: ___________________________ Purchase price: ________ Purchase date: __________

Current market value: ________________ Mortgage balance: ________________ Equity: ________________
Section 3. (continued) **General financial information** (personal and business)

<table>
<thead>
<tr>
<th>D. Physical address</th>
<th>Type of account</th>
<th>Name and address of creditor</th>
<th>Monthly payment</th>
<th>Credit limit</th>
<th>Credit available</th>
<th>Amount owed</th>
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</table>

How is title held: ___________________________ Purchase price: _______________ Purchase date: _______________

Current market value: _______________ Mortgage balance: _______________ Equity: _______________

**Total Equity.** Enter this amount on line 9, Section 4 (asset and liability analysis) . . . . . . $ $

**Credit cards and lines of credit.** Credit cards and unsecured lines of credit may only be allowed with three months of statements showing they are used for living expenses.

<table>
<thead>
<tr>
<th>Type of account</th>
<th>Credit cards and lines of credit</th>
<th>Name and address of creditor</th>
<th>Monthly payment</th>
<th>Credit limit</th>
<th>Credit available</th>
<th>Amount owed</th>
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</table>

**Total.** Enter this amount on line 28, Section 4 (asset and liability analysis) . . . . . . $ $

**Other financial information.** Please provide the following information relating to your financial conditions. If you check “Yes” in any box, provide dates, an explanation, and documentation. Attach additional pages as needed.

- Court proceedings ............................................ ☐ No ☐ Yes
- Repossessions ............................................... ☐ No ☐ Yes
- Anticipated increase in income ........................... ☐ No ☐ Yes
- Bankruptcies/receiverships ............................... ☐ No ☐ Yes
- Recent transfer of assets ................................. ☐ No ☐ Yes
- Beneficiary to trust, estate, profit sharing, etc.... ☐ No ☐ Yes

Last Oregon income tax return filed .......................... Year: _______

Total number of exemptions claimed ...................... ___________

Adjusted gross income from return ....................... $ $

List any vehicles, equipment, or property sold, given away, or repossessed during the past three years. Attach additional pages as needed.

<table>
<thead>
<tr>
<th>Year, make, model of vehicle, or property address</th>
<th>Who took possession</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
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</tbody>
</table>

**Total Equity.** Enter this amount on line 9, Section 4 (asset and liability analysis) . . . . . . $ $

**Credit cards and lines of credit.** Credit cards and unsecured lines of credit may only be allowed with three months of statements showing they are used for living expenses.

<table>
<thead>
<tr>
<th>Type of account</th>
<th>Credit cards and lines of credit</th>
<th>Name and address of creditor</th>
<th>Monthly payment</th>
<th>Credit limit</th>
<th>Credit available</th>
<th>Amount owed</th>
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</tbody>
</table>

**Total.** Enter this amount on line 28, Section 4 (asset and liability analysis) . . . . . . $ $

**Other financial information.** Please provide the following information relating to your financial conditions. If you check “Yes” in any box, provide dates, an explanation, and documentation. Attach additional pages as needed.

- Court proceedings ............................................ ☐ No ☐ Yes
- Repossessions ............................................... ☐ No ☐ Yes
- Anticipated increase in income ........................... ☐ No ☐ Yes
- Bankruptcies/receiverships ............................... ☐ No ☐ Yes
- Recent transfer of assets ................................. ☐ No ☐ Yes
- Beneficiary to trust, estate, profit sharing, etc.... ☐ No ☐ Yes

Last Oregon income tax return filed .......................... Year: _______

Total number of exemptions claimed ...................... ___________

Adjusted gross income from return ....................... $ $

List any vehicles, equipment, or property sold, given away, or repossessed during the past three years. Attach additional pages as needed.

<table>
<thead>
<tr>
<th>Year, make, model of vehicle, or property address</th>
<th>Who took possession</th>
<th>Value</th>
</tr>
</thead>
<tbody>
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</table>
### Section 4. Assets and liability analysis

#### Immediate assets.

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th>Totals</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Cash</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td>Bank accounts / balance (from section 3)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td>Safe deposit box value of contents (from section 3)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td>Enter vehicles equity (from section 3)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5.</td>
<td>Vehicle equity formula (line 4 - $3000, if less than -0-, enter -0-) <strong>This line for use on form 150-101-157, Settlement Offer Application only.</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6.</td>
<td>Personal property (from section 3)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7.</td>
<td>Loan / cash surrender value for life insurance (from section 3)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8.</td>
<td>Securities (from section 3)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>9.</td>
<td>Current real estate equity (from section 3)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>10.</td>
<td>Notes</td>
<td></td>
<td></td>
</tr>
<tr>
<td>11.</td>
<td>Accounts receivable</td>
<td></td>
<td></td>
</tr>
<tr>
<td>12.</td>
<td>Judgements / settlements received or pending</td>
<td></td>
<td></td>
</tr>
<tr>
<td>13.</td>
<td>Interest in trusts</td>
<td></td>
<td></td>
</tr>
<tr>
<td>14.</td>
<td>Interest in estates</td>
<td></td>
<td></td>
</tr>
<tr>
<td>15.</td>
<td>Partnership interests</td>
<td></td>
<td></td>
</tr>
<tr>
<td>16.</td>
<td>Major machinery / equipment, etc.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>17.</td>
<td>Business inventory</td>
<td></td>
<td></td>
</tr>
<tr>
<td>18.</td>
<td>Other assets: (specify): (Example: $1,000 guns / $200 jewelry / $800 gold)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>19.</td>
<td>Other assets (specify):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>20.</td>
<td><strong>Total assets</strong></td>
<td></td>
<td>$</td>
</tr>
</tbody>
</table>

#### Real property equity. **From Section 3. Liens or cost of sale don’t reduce equity (can’t be less than -0-).**

<table>
<thead>
<tr>
<th>Address or location</th>
<th>RMV from property tax statement</th>
<th>Mortgage payoff amount</th>
<th>Equity</th>
<th>Totals</th>
</tr>
</thead>
<tbody>
<tr>
<td>21. Property 1:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>22. Property 2:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>23. Property 3:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>24. Total equity from properties listed on additional sheet (if applicable)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>25. Total of all real property equity (add the Equity column from lines 21 thru 24)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>26. Enter dollar amount from line 20</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**27. Total value of all immediate assets and real property equity** (line 25 plus line 26) $ 

#### Current liabilities. **Include judgements, notes, and other charge accounts. Do not include vehicle or home loans.**

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th>Totals</th>
</tr>
</thead>
<tbody>
<tr>
<td>27.</td>
<td>Amount owed to credit cards and lines of credit (from Section 3)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>28.</td>
<td>Taxes owed to IRS (provide a copy of recent notices)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>29.</td>
<td>Other liabilities (specify):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>30.</td>
<td>Other liabilities (specify):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>31.</td>
<td>Other liabilities (specify):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>32.</td>
<td>Other liabilities (specify):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>33.</td>
<td><strong>Total liabilities</strong></td>
<td></td>
<td>$</td>
</tr>
</tbody>
</table>

---

150-101-159 (Rev. 01-17)  
Form OR-SFC, Financial Statement—Page 5

Broadbrush Taxation: Tax Law for the Non–Tax Attorney
### Section 5. Monthly income and expense analysis

**Income.** Attach copies of all income sources that contribute to household expenses (minimum three months).

<table>
<thead>
<tr>
<th>List Net Income</th>
<th>Totals</th>
</tr>
</thead>
<tbody>
<tr>
<td>34. Wages / salaries / tips (yours)</td>
<td></td>
</tr>
<tr>
<td>35. Social Security income (yours)</td>
<td></td>
</tr>
<tr>
<td>36. Pension / annuities (yours)</td>
<td>![pension] ![annuities] both</td>
</tr>
<tr>
<td>37. Disability (yours)</td>
<td></td>
</tr>
<tr>
<td>38. Wages / salaries / tips (spouse/RDP's)</td>
<td></td>
</tr>
<tr>
<td>39. Social Security income (spouse/RDP's)</td>
<td></td>
</tr>
<tr>
<td>40. Pension / annuities (spouse/RDP's)</td>
<td>![pension] ![annuities] both</td>
</tr>
<tr>
<td>41. Disability (spouse/RDP's)</td>
<td></td>
</tr>
<tr>
<td>42. Interest / dividends / royalties (average monthly)</td>
<td></td>
</tr>
<tr>
<td>43. Payments from trust / partnerships / entities</td>
<td></td>
</tr>
<tr>
<td>44. Unemployment</td>
<td></td>
</tr>
<tr>
<td>45. Other income (specify)</td>
<td></td>
</tr>
<tr>
<td>46. Other income (specify)</td>
<td></td>
</tr>
<tr>
<td>47. Other income (specify)</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>List Gross Income</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>48. Business income (yours)</td>
<td></td>
</tr>
<tr>
<td>49. Business income (spouse/RDP's)</td>
<td></td>
</tr>
<tr>
<td>50. Rental income</td>
<td></td>
</tr>
<tr>
<td>51. Child support</td>
<td></td>
</tr>
<tr>
<td>52. Alimony</td>
<td></td>
</tr>
<tr>
<td>53. Seller carried contracts / sales</td>
<td></td>
</tr>
</tbody>
</table>

| 54. Total income | \( \ldots \) |

**Personal expenses (actually paid).** (May be limited by federal standards.)

<table>
<thead>
<tr>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>55. Rent / mortgage / real estate secured line(s) of credit</td>
</tr>
<tr>
<td>56. Real estate taxes</td>
</tr>
<tr>
<td>57. Personal home owners / renters insurance: ( ) Assoc. fees: ( )</td>
</tr>
<tr>
<td>58. Personal utilities:</td>
</tr>
<tr>
<td>Electric: ( )</td>
</tr>
<tr>
<td>Natural gas / oil: ( )</td>
</tr>
<tr>
<td>Phone, internet, &amp; cable: ( )</td>
</tr>
<tr>
<td>Garbage: ( )</td>
</tr>
<tr>
<td>Water / sewer: ( )</td>
</tr>
<tr>
<td>59. Food / clothing / other Items:</td>
</tr>
<tr>
<td>No. of people: ( ) Their ages: ( )</td>
</tr>
<tr>
<td>60. Auto payments / lease</td>
</tr>
<tr>
<td>61. Auto insurance</td>
</tr>
<tr>
<td>62. Auto maintenance / fuel / other transportation</td>
</tr>
<tr>
<td>63. Medical payments (not covered by insurance) (provide proof)</td>
</tr>
<tr>
<td>64. Estimated tax payments (provide proof)</td>
</tr>
<tr>
<td>65. Court ordered payments (alimony, child support, restitution, not deducted from your paycheck)</td>
</tr>
</tbody>
</table>

150-101-159 (Rev. 01-17)
### Section 5. (continued) Monthly income and expense analysis

#### Personal expenses (actually paid), (continued) (May be limited by federal standards.)

<table>
<thead>
<tr>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>66. Garnishments (specify)</td>
</tr>
<tr>
<td>67. Delinquent tax payments (other than Oregon state taxes, IRS, etc.)</td>
</tr>
<tr>
<td>68. Work related child care expenses</td>
</tr>
<tr>
<td>69. Other expenses (do not include unsecured debt) (specify)</td>
</tr>
<tr>
<td>70. Total personal expenses</td>
</tr>
</tbody>
</table>

#### Business expenses (actually paid). Provide current general ledger and profit / loss.

<table>
<thead>
<tr>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>71. Materials purchased (specify)</td>
</tr>
<tr>
<td>72. Supplies (specify)</td>
</tr>
<tr>
<td>73. Installment payments (specify)</td>
</tr>
<tr>
<td>74. Monthly payments (specify)</td>
</tr>
<tr>
<td>75. Rent / mortgage</td>
</tr>
<tr>
<td>76. Insurance</td>
</tr>
<tr>
<td>77. Business utilities: Electric: ( )</td>
</tr>
<tr>
<td>Natural gas / oil: ( )</td>
</tr>
<tr>
<td>Phone, internet, &amp; cable: ( )</td>
</tr>
<tr>
<td>Garbage: ( )</td>
</tr>
<tr>
<td>Water / sewer: ( )</td>
</tr>
<tr>
<td>78. Net wages and salaries paid to employees</td>
</tr>
<tr>
<td>79. Current taxes (payroll / business)</td>
</tr>
<tr>
<td>80. Other: Specify: (do not include unsecured debt)</td>
</tr>
<tr>
<td>81. Total business expenses</td>
</tr>
<tr>
<td>82. Net disposable income (line 54 minus lines 70 and 81)</td>
</tr>
</tbody>
</table>

### Section 6. Additional information

Please provide any additional information not already included. Attach additional pages as needed. All household income must be included.
Section 6. (continued) Additional information
Please provide any additional information not already included. Attach additional pages as needed. All household income must be included.

Your proposed monthly payment........................................................................................................ $

Your proposed payment date ................................................................................................................

Section 7. Authorization to disclose
Under penalties of perjury, I declare that I have examined this statement of assets, liabilities, and other information, and to the best of my knowledge and belief, it is true, correct, and complete. I (we) authorize the Oregon Department of Revenue to verify any information on this financial statement which may include credit reports.

Sign here

X
Your signature Date

X
Spouse's signature (if applying jointly, both must sign even if only one had income) Date

Return your completed form to: Oregon Department of Revenue
PO Box 14725
Salem OR 97309-5018
Chapter 4—Tax Collection Issues

General information

Introduction

Some taxpayers owe more tax than they can pay. If you’re in this situation, we may be able to help you settle your tax debt by paying less than you owe. This is called a settlement offer.

The settlement offer process isn’t easy and it won’t work for everyone; however, it may be worth applying for if you can prove you don’t have enough money to pay it off.

Conditions for qualifying

To qualify for a settlement offer, you must meet all of these conditions:

• You’re not appealing any tax debts.
• You must have filed all required Oregon tax returns for all tax years and all tax types.
• You haven’t completed another settlement offer since October 1, 2001.
• You must show that you cannot sell assets or borrow against them to pay your tax debt.
• You must show that you don’t have enough monthly income or assets to pay your tax debt in full.
• You’re not in bankruptcy or in litigation.

Before you start

It will take you at least three hours to complete the application. You must locate and copy many documents (bank statements, pay stubs, lease agreements, deeds, etc.) to include with your application (see page 6).

Not everyone who applies for a settlement offer will qualify. To determine your chances, ask yourself these questions:

1. Do you receive Social Security income, Social Security disability, pension payments, or public assistance?
2. Are you over age 60?
3. Are your total assets worth more than $5,000?
4. Is your only asset your home?
5. Is your tax debt older than seven years?

If you answered yes to two or more questions, call 503-945-8254 for more information. Otherwise, continue filling out the settlement offer application.

What to include in your settlement offer

It must include:

• The completed and signed application. If your offer isn’t signed, we’ll return it without processing. You may re-send the signed offer.
• All supporting documentation (see page 6).
• The Tax Information Authorization and Power of Attorney for Representation form if you want someone to represent you during the settlement offer (page 16).
• Offer must follow settlement offer calculations on page 13, or offer may be denied.
• A nonrefundable payment that is 5 percent of the settlement offer amount. Payment must be money order, cashier’s check, or cash.

If you don’t include payment, we’ll return your offer without processing it. You may re-send the application with your payment.

What to expect after you submit your application

• If your application is complete, we’ll review it and usually accept or deny it within 30 days. We’ll notify you in writing of our decision.

If your application is incomplete or inaccurate, we may send it back to you or ask you to send us more information. This will delay our review.

• We’ll continue collection action on your debt while we review your application. Such action may include garnishing your wages, placing property liens, and seizing property.

Settlement offer acceptance

• If we accept your settlement offer, you must pay the amount in full within 30 days.
• If you can’t pay the entire amount at one time, you may ask for a payment plan to pay it off in 12 equal monthly payments.
• We’ll accept credit or debit card, check, money order, cashier’s check, or cash.
• You can never have another settlement offer.

Settlement offer denial

If we deny your settlement offer:

• You can’t appeal our decision.
• We’ll apply your 5-percent payment to your tax debt.
• You may file another application with a 5-percent payment.
Frequently asked questions

**Do I need an accountant or attorney to help me?**
You can probably complete the form on your own. If you need help, your assigned revenue agent or settlement offer agent can answer your questions.

**Who reviews my application?**
A settlement offer agent will review your application.

**If I have questions, who should I call?**
You can call the revenue agent assigned to your case or ask for a settlement offer agent, 503-945-8254.

**What do I send with my application?**
Please see the check list, page 6.

**What if my financial condition changes after you approve my settlement offer?**
It won’t affect the terms of the offer. However, if the change is due to information you omitted or misstated on your application, you may be in default.

**If I file all my returns on time, can I make payments on tax I may owe?**
You must pay taxes due within 90 days from the date on the billing notice we’ll send you.

**If you deny my application, may I submit another settlement offer?**
Yes. Make sure to include all supporting documentation and another 5-percent payment.

**Will you apply prior payments to my offer amount?**
No. We apply any payments you make before or during the settlement offer review process to your total tax debt.

**How long will it take you to make a decision?**
If your application is complete, we’ll usually make a decision within 30 days from the day we receive your application.

**When I pay off the offer amount, will you release property liens?**
No. The lien will be released once the three year compliance period has ended, at which point the settlement offer process is complete. Contact the county in which your property is located for a copy of the lien release. It takes about 45 days to release the lien.

**Are there any expenses that may not be allowed in determining my disposable income?**
Yes. We typically don’t allow you to claim college tuition, voluntary retirement contributions, payments on unsecured debts such as credit cards, and other similar expenses.

**How is my inability to pay in full determined?**
We will look at property you own; past, present, and future earning potential; your present lifestyle; your ability to borrow; and any other factors that might be helpful in making a decision.
Chapter 4—Tax Collection Issues

Application instructions

• You must complete all sections.
• Don’t fill in shaded boxes.
• Attach additional pages if necessary.
• Print clearly.

Section 1. Personal information
Fill out completely and include all members of your household.

Section 2. Employment information
There are two sections: one for your employment information and one for your spouse/registered domestic partner (RDP) employment information.

Provide the name of your employer, or the name of your business if you’re self-employed.

Check the “paid” box that applies to how frequently you get a pay check.

• Important—Include the number of allowances you claim on your most recent W-4 form.

Section 3. General financial information—personal and business
Bank accounts—List all bank accounts. For the total dollar amount in your accounts, add together only those accounts with positive balances.

• Important—For any bank accounts with negative balances, enter -0-.

Example: Bob has three bank accounts:
1. Checking account 1 $400.00
2. Checking account 2 –$100.00
3. Savings account $600.00

He lists all three accounts and enters -0- in the balance column for checking account 2. The total of his bank accounts is $1,000; not $900.

Personal property—if you own a business, include only personal property not used in your business.

Credit cards and unsecured lines of credit—we don’t allow these expenses when we determine your ability to pay.

Other financial information—include any court proceedings that resulted in or may result in a financial judgment in your favor.

Section 4. Assets and liability analysis
Lines 2–9, enter totals from Section 3.
Lines 18–19, don’t include everyday household items such as clothing, furniture, appliances, etc.
Lines 21–23, include properties listed in Section 3. To determine current property value, use the real market value (RMV) from your most recent property tax statement.
Line 28, include unsecured credit balance from Section 3 only if you filled it in.
Lines 30–32, explain other debts and provide supporting documentation.

Section 5. Monthly income and expense analysis

• Important—if you work on commission or own a business, we may ask you for more than three months pay stubs.

Fill in gross and net amounts, except where boxes are shaded.

Line 51–53, explain other income and provide supporting documentation.
Lines 55–64, provide proof of monthly payments for each expense.
Lines 71–80, provide proof of monthly payments for each business-related expense.

Section 6. Settlement offer calculations
Line 84, disposable income formula.

Example: Anne’s net disposable income from line 82 is $1,500. She enters $1,500 on line 83 and multiplies it by 12.0.

$1,500 x 12.0 = $18,000
She enters $18,000 on line 84.

Line 86, assets and equity formula.

Example: Anne’s total value of all immediate assets and real property equity from line 27 is $3,000. She enters that on line 85 and multiplies it by 0.75.

$3,000 x 0.75 = $2,250.
She enters $2,250 on line 86.

Line 87, add lines 84 and 86 to get your settlement offer amount.
Chapter 4—Tax Collection Issues

Line 87, 5-percent nonrefundable payment to submit with your application (whole dollar amount only).

Example: Anne adds her disposable income formula amount of $18,000 (line 84) to her assets and equity formula amount of $2,250 (line 86).

$$18,000 + 2,250 = 20,250.$$ 
She enters $20,250 on line 87 and multiplies it by 0.05

$$20,250 \times 0.05 = 1,012.50$$ 
She enters $1,012.50 on line 88.

Anne gets a cashier’s check for $1,013, indicates it is a collections payment, and includes it with her application.

Payoff information—You must pay the offer amount in full within 30 days from the date of our acceptance letter.

If you can’t pay it all at once, you may pay it off in 12 equal monthly payments. Write the day of the month you want your installment payment to be due.

Tax debts included in settlement offer—Write the tax type and years/quarters of taxes.

Section 7. Additional information
You may include information that you want us to know regarding your settlement offer.

Terms and conditions
Read the terms and conditions carefully before you sign the taxpayer agreement.

Taxpayer agreement and authorization to use credit reports
By signing, you confirm that the information in your application is correct and complete to the best of your knowledge.

Your signature also authorizes us to use credit reports and other tools to verify any information in your applications, and for collection purposes.

Before mailing
Review your application to make sure it’s complete and includes all supporting documentation and payment.

Have questions? Need help?

Internet

www.oregon.gov/dor
• Download forms, instructions, and publications.
• Check your refund status.
• Make payments.
• Find out how much you owe.

Email or write

General: questions.dor@state.or.us
Settlement offers: settlement.offer @oregon.gov

Oregon Department of Revenue
955 Center St NE
Salem OR 97301-2555
• Include your name and daytime phone number.
• Include the last four digits of your SSN or ITIN.

Printed forms or publications:
Forms
Oregon Department of Revenue
PO Box 14999
Salem OR 97309-0990

Español: preguntas.dor@state.or.us

Phone

Settlement offers .................................................. 503-945-8254
Salem area or outside Oregon ......................... 503-378-4988
Toll-free from an Oregon prefix ....................... 1-800-356-4222
• Check your refund status.
• Order forms, instructions, and publications.
• Listen to recorded information.
• Speak with a representative:
  Monday–Friday .................................... 7:15 a.m.–5 p.m.
  Closed holidays. Wait times may vary.

Asistencia en español:
  En Salem o fuera de Oregon ......................... 503-378-4988
  Gratis de prefijo de Oregon ....................... 1-800-356-4222

TTY (hearing or speech impaired; machine only):
  Salem area or outside Oregon ................... 503-945-8617
  Toll-free from an Oregon prefix ................ 1-800-886-7204

Americans with Disabilities Act (ADA): Call one of the help numbers above for information in alternative formats.

In person

Find directions and hours on our website.
Settlement offer application check list

You must include the following information with your application. If you don’t, we may return it without processing, or ask you for more documentation.

- All tax debt you owe.
- You (and your spouse/RDP, if applying jointly) must sign the taxpayer agreement and authorization to use credit reports (page 15); and, if needed, the Tax Information Authorization and Power of Attorney for Representation form (page 16).
- A nonrefundable payment that is 5 percent of the settlement offer amount. Payment must be money order, cashier’s check, or cash.

**Verification of all income sources**

To verify your household income, you must include:

- Complete bank statements for the last three months for all checking and savings accounts.
- Pay stubs for at least the last three months.
- Documentation of other income sources for the last three months. For example, Social Security, disability, child support, alimony, commissions, etc.

**Verification of all expenses**

You must verify your household expenses. We accept:

- Copies of cancelled checks (front and back).
- Documents showing payments on court-ordered debts.
- Billing statements showing payments.
- Receipts of payments.

**Self-employed or business owners**

If you’re self-employed or a business owner, you must include:

- A profit/loss statement from your business showing all activity for the current year.
- Bank statements for the last six months for all business checking and savings accounts.
- A general ledger showing business expenses actually paid for the current year.
- Statements for loans you claimed as business expenses.

**Verification of Assets**

- You must include all property owned for personal or business use.
- Include all county value documents.
- Include most current mortgage balance statement (if currently financing).

We will continue collection action on your tax debt until your settlement offer is accepted.
### Section 1. Personal information

<table>
<thead>
<tr>
<th>Your first name</th>
<th>MI</th>
<th>Last name</th>
<th>Your Social Security number</th>
<th>Your date of birth</th>
</tr>
</thead>
<tbody>
<tr>
<td>Other names or aliases used</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Spouse/RDP’s first name</th>
<th>MI</th>
<th>Last name</th>
<th>Spouse/RDP’s Social Security number</th>
<th>Spouse/RDP’s date of birth</th>
</tr>
</thead>
<tbody>
<tr>
<td>Spouse/RDP’s other names or aliases used</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Your cell phone</th>
<th>Your driver license number</th>
<th>State</th>
<th>Spouse/RDP’s cell phone</th>
<th>Spouse/RDP’s driver license no.</th>
<th>State</th>
</tr>
</thead>
<tbody>
<tr>
<td>Your email</td>
<td>Spouse/RDP’s email</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Dependent’s name (living with you)</th>
<th>Date of birth</th>
<th>Social Security number</th>
<th>Relationship</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Dependent’s name (living with you)</th>
<th>Date of birth</th>
<th>Social Security number</th>
<th>Relationship</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Dependent’s name (living with you)</th>
<th>Date of birth</th>
<th>Social Security number</th>
<th>Relationship</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Your current physical address</th>
<th>City</th>
<th>State</th>
<th>ZIP code</th>
<th>County</th>
<th>Your home phone</th>
</tr>
</thead>
<tbody>
<tr>
<td>Your mailing address (if different from above)</td>
<td>City</td>
<td>State</td>
<td>ZIP code</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Name of your tax representative (CPA, attorney, enrolled agent)</th>
<th>Fax number</th>
<th>Phone</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address of your tax representative</td>
<td>City</td>
<td>State</td>
</tr>
</tbody>
</table>

### Section 2. Employment information (personal and business)

<table>
<thead>
<tr>
<th>Your employer or business name</th>
<th>Business phone</th>
<th>Payroll fax</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address</td>
<td>City</td>
<td>State</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Date hired:</th>
<th>Occupation:</th>
<th>Wage earner</th>
<th>Sole proprietor</th>
<th>Partner</th>
<th>Owner officer</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Paid:</th>
<th>Weekly</th>
<th>Every other week</th>
<th>Monthly</th>
<th>Twice a month</th>
<th>Number of allowances claimed on Form W-4:</th>
<th></th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Spouse/RDP’s employer or business name</th>
<th>Business phone</th>
<th>Payroll fax</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address</td>
<td>City</td>
<td>State</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Date hired:</th>
<th>Occupation:</th>
<th>Wage earner</th>
<th>Sole proprietor</th>
<th>Partner</th>
<th>Owner officer</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Paid:</th>
<th>Weekly</th>
<th>Every other week</th>
<th>Monthly</th>
<th>Twice a month</th>
<th>Number of allowances claimed on Form W-4:</th>
<th></th>
</tr>
</thead>
</table>
### Section 2. (continued) Employment information (personal and business)

If self-employed: List all responsible owner(s), partner(s), officer(s), major shareholder(s), etc.

Identify the major responsibilities of each by circling the codes that apply: 1 = Files returns; 2 = Pays taxes; 3 = Prefers creditors; 4 = Hires and fires

<table>
<thead>
<tr>
<th>Name and title</th>
<th>Effective date</th>
<th>Home address</th>
<th>Home phone</th>
<th>SSN</th>
<th>Code</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1 2 3 4</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>1 2 3 4</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>1 2 3 4</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Section 3. General financial information (personal and business)

**Bank accounts.** Include IRA and retirement plans certificates of deposit, etc. For all accounts, attach copies of your last three bank statements. Attach additional pages as needed.

<table>
<thead>
<tr>
<th>Name of institution</th>
<th>Address</th>
<th>Type</th>
<th>Date opened</th>
<th>Account number</th>
<th>Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
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<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Total.** Enter this amount on line 2, Section 4 (asset and liability analysis)........................ $

**Safe deposit boxes (rented or accessed).** Include location, box number, and contents. Attach additional pages as needed.

<table>
<thead>
<tr>
<th>Name of institution</th>
<th>Address</th>
<th>Box identification</th>
<th>Current value of assets</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Total.** Enter this amount on line 3, Section 4 (asset and liability analysis)........................ $

**Vehicles.** Attach supporting documentation of current payoff. Attach additional pages as needed, and vehicles paid in full.

<table>
<thead>
<tr>
<th>Year, make, model, license number</th>
<th>Lender/lien holder</th>
<th>Current market value</th>
<th>Current payoff</th>
<th>Available equity (cannot be less than -0-)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Total.** Enter this amount on line 4, section 4 (asset and liability analysis) ...................... $

**Personal property.** Include water craft, RVs, air craft, business equipment, and/or machinery. Attach additional pages as needed.

<table>
<thead>
<tr>
<th>Year, make, model, license number</th>
<th>Lender/lien holder</th>
<th>Current market value</th>
<th>Current payoff</th>
<th>Available equity (cannot be less than -0-)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Section 3. (continued) General financial information (personal and business)

Personal property. (continued) Include water craft, RVs, air craft, business equipment, and/or machinery. Attach additional pages as needed.

Real property.
Include a copy of the deed and a copy of homeowners/rental insurance policy with riders and supporting documentation of loan balance.

Attach additional pages as needed.

<table>
<thead>
<tr>
<th>Year, make, model, license number</th>
<th>Lender/lien holder</th>
<th>Current market value</th>
<th>Current payoff</th>
<th>Available equity (cannot be less than 0)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Total. Enter this amount on line 6, section 4 (asset and liability analysis) $ ..............

Life insurance. Attach additional pages as needed.

<table>
<thead>
<tr>
<th>Name of insurance company</th>
<th>Agent's name and phone</th>
<th>Policy number</th>
<th>Type</th>
<th>Face amount</th>
<th>Loan/cash surrender value</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Total. Enter this amount on line 7, section 4 (asset and liability analysis) $ ..............

Securities. Include stocks, bonds, mutual funds, money market funds, securities, 401(k), etc. Attach additional pages as needed.

<table>
<thead>
<tr>
<th>Type</th>
<th>Where located</th>
<th>Owner of record</th>
<th>Quantity or denomination</th>
<th>Current value</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Total. Enter this amount on line 8, section 4 (asset and liability analysis) $ ..............

Real property. Include a copy of the deed and a copy of homeowners/rental insurance policy with riders and supporting documentation of loan balance. Attach additional pages as needed.

<table>
<thead>
<tr>
<th>A. Physical address</th>
<th>Type (single- or multi-family dwelling, lot, rental, etc.)</th>
<th>Mortgage lender's name and address</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Parcel number: __________

How is title held: __________________________ Purchase price: ______________ Purchase date: __________

Current market value: __________________ Mortgage balance: __________________ Equity: __________________

B. Physical address

<table>
<thead>
<tr>
<th></th>
<th>Type (single- or multi-family dwelling, lot, rental, etc.)</th>
<th>Mortgage lender's name and address</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Parcel number: __________

How is title held: __________________________ Purchase price: ______________ Purchase date: __________

Current market value: __________________ Mortgage balance: __________________ Equity: __________________

C. Physical address

<table>
<thead>
<tr>
<th></th>
<th>Type (single- or multi-family dwelling, lot, rental, etc.)</th>
<th>Mortgage lender's name and address</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Parcel number: __________

How is title held: __________________________ Purchase price: ______________ Purchase date: __________

Current market value: __________________ Mortgage balance: __________________ Equity: __________________
### Section 3. (continued) General financial information (personal and business)

<table>
<thead>
<tr>
<th>Type of account</th>
<th>Name and address of creditor</th>
<th>Monthly payment</th>
<th>Credit limit</th>
<th>Credit available</th>
<th>Amount owed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Credit cards and unsecured lines of credit</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Type of account</td>
<td>Name and address of creditor</td>
<td>Monthly payment</td>
<td>Credit limit</td>
<td>Credit available</td>
<td>Amount owed</td>
</tr>
<tr>
<td>Credit cards and unsecured lines of credit</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Total:** Enter this amount on line 28, Section 4 (asset and liability analysis).

### Credit cards and lines of credit

Credit cards and unsecured lines of credit may only be allowed with three months of statements showing they are used for living expenses.

| Credit cards and unsecured lines of credit | | |
| Credit cards and unsecured lines of credit | | |

**Total:** Enter this amount on line 28, Section 4 (asset and liability analysis).

### Other financial information

Please provide the following information relating to your financial conditions. If you check “Yes” in any box, provide dates, an explanation, and documentation. Attach additional pages as needed.

| Court proceedings | | |
| Court proceedings | | |
| Repossessions | | |
| Repossessions | | |
| Anticipated increase in income | | |
| Anticipated increase in income | | |
| Bankruptcies/receiverships | | |
| Bankruptcies/receiverships | | |
| Recent transfer of assets | | |
| Recent transfer of assets | | |
| Beneficiary to trust, estate, profit sharing, etc. | | |
| Beneficiary to trust, estate, profit sharing, etc. | | |
| Last Oregon income tax return filed | | |
| Last Oregon income tax return filed | | |
| Total number of exemptions claimed | | |
| Total number of exemptions claimed | | |
| Adjusted gross income from return | | |
| Adjusted gross income from return | | |

List any vehicles, equipment, or property sold, given away, or repossessed during the past three years. Attach additional pages as needed.

| Year, make, model of vehicle, or property address | Who took possession | Value |
| Year, make, model of vehicle, or property address | Who took possession | Value |
| Year, make, model of vehicle, or property address | Who took possession | Value |
| Year, make, model of vehicle, or property address | Who took possession | Value |
### Section 4. Assets and liability analysis

#### Immediate assets.

<table>
<thead>
<tr>
<th></th>
<th></th>
<th>Totals</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Cash</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Bank accounts / balance (from section 3)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. Safe deposit box value of contents (from section 3)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4. Enter vehicles / available equity (from section 3) here:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5. Vehicle equity formula (line 4 - $3000, if less than -0-, enter -0-)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6. Personal property (from section 3)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7. Loan / cash surrender value for life insurance (from section 3)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8. Securities (from section 3)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>9. Current real estate equity (from section 3)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>10. Notes</td>
<td></td>
<td></td>
</tr>
<tr>
<td>11. Accounts receivable</td>
<td></td>
<td></td>
</tr>
<tr>
<td>12. Judgements / settlements received or pending</td>
<td></td>
<td></td>
</tr>
<tr>
<td>13. Interest in trusts</td>
<td></td>
<td></td>
</tr>
<tr>
<td>14. Interest in estates</td>
<td></td>
<td></td>
</tr>
<tr>
<td>15. Partnership interests</td>
<td></td>
<td></td>
</tr>
<tr>
<td>16. Major machinery / equipment, etc.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>17. Business inventory</td>
<td></td>
<td></td>
</tr>
<tr>
<td>18. Other assets: (specify): (Example: $1,000 guns / $200 jewelry / $800 gold)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>19. Other assets (specify):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>20. <strong>Total assets</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

#### Real property equity.

From Section 3, Liens or cost of sale don’t reduce equity (can’t be less than -0-).

<table>
<thead>
<tr>
<th></th>
<th>Address or location</th>
<th>RMV from property tax statement</th>
<th>Mortgage payoff amount</th>
<th>Equity</th>
<th>Totals</th>
</tr>
</thead>
<tbody>
<tr>
<td>21. Property 1:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>22. Property 2:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>23. Property 3:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>24. Total equity from properties listed on additional sheet (if applicable)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>25. Total of all real property equity (add the Equity column from lines 21 thru 24)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>26. Enter dollar amount from line 20</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

#### 27. Total value of all immediate assets and real property equity

(line 25 plus line 26) ........................................................ $

#### Current liabilities.

Include judgements, notes, and other charge accounts. Do **not** include vehicle or home loans.

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th>Totals</th>
</tr>
</thead>
<tbody>
<tr>
<td>28. Amount owed to credit cards and lines of credit (from Section 3)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>29. Taxes owed to IRS (provide a copy of recent notices)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>30. Other liabilities (specify):</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>31. Other liabilities (specify):</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>32. Other liabilities (specify):</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>33. <strong>Total liabilities</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
## Section 5. Monthly income and expense analysis

**Income.** Attach copies of all income sources that contribute to household expenses (minimum three months).

<table>
<thead>
<tr>
<th>List Net Income</th>
<th>Totals</th>
</tr>
</thead>
<tbody>
<tr>
<td>34. Wages / salaries / tips (yours)</td>
<td></td>
</tr>
<tr>
<td>35. Social Security income (yours)</td>
<td></td>
</tr>
<tr>
<td>36. Pension / annuities (yours)</td>
<td></td>
</tr>
<tr>
<td>37. Disability (yours)</td>
<td></td>
</tr>
<tr>
<td>38. Wages / salaries / tips (spouse/RDP’s)</td>
<td></td>
</tr>
<tr>
<td>39. Social Security income (spouse/RDP’s)</td>
<td></td>
</tr>
<tr>
<td>40. Pension / annuities (spouse/RDP’s)</td>
<td></td>
</tr>
<tr>
<td>41. Disability (spouse/RDP’s)</td>
<td></td>
</tr>
<tr>
<td>42. Interest / dividends / royalties (average monthly)</td>
<td></td>
</tr>
<tr>
<td>43. Payments from trust / partnerships / entities</td>
<td></td>
</tr>
<tr>
<td>44. Unemployment</td>
<td></td>
</tr>
<tr>
<td>45. Other income (specify)</td>
<td></td>
</tr>
<tr>
<td>46. Other income (specify)</td>
<td></td>
</tr>
<tr>
<td>47. Other income (specify)</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>List Gross Income</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>48. Business income (yours)</td>
<td></td>
</tr>
<tr>
<td>49. Business income (spouse/RDP’s)</td>
<td></td>
</tr>
<tr>
<td>50. Rental income</td>
<td></td>
</tr>
<tr>
<td>51. Child support</td>
<td></td>
</tr>
<tr>
<td>52. Alimony</td>
<td></td>
</tr>
<tr>
<td>53. Seller carried contracts / sales</td>
<td></td>
</tr>
</tbody>
</table>

54. **Total income** ...........................................................................................................................................................................

55. **Rent / mortgage / real estate secured line(s) of credit**

<table>
<thead>
<tr>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>If renting—name, address, and phone number of landlord</td>
</tr>
</tbody>
</table>

56. **Real estate taxes** (Is this included in your mortgage payment? □ No □ Yes)

57. **Personal home owners / renters insurance:** ( ) Assoc. fees: ( )

58. **Personal utilities:**
   - Electric: ( )
   - Natural gas / oil: ( )
   - Phone, internet, & cable: ( )
   - Garbage: ( )
   - Water / sewer: ( )

59. **Food / clothing / other Items:** No. of people: ( ) Their ages: ( )

60. **Auto payments / lease**

61. **Auto insurance**

62. **Auto maintenance / fuel / other transportation**

63. **Medical payments (not covered by insurance) (provide proof)**

64. **Estimated tax payments (provide proof)**

65. **Court ordered payments (alimony, child support, restitution, not deducted from your paycheck)**
### Section 5. (continued) Monthly income and expense analysis

#### Personal expenses (actually paid), (continued) (May be limited by federal standards.)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>66.</td>
<td>Garnishments (specify)</td>
<td></td>
</tr>
<tr>
<td>67.</td>
<td>Delinquent tax payments (other than Oregon state taxes, IRS, etc.)</td>
<td></td>
</tr>
<tr>
<td>68.</td>
<td>Work related child care expenses</td>
<td></td>
</tr>
<tr>
<td>69.</td>
<td>Other expenses (do not include unsecured debt) (specify)</td>
<td></td>
</tr>
<tr>
<td>70.</td>
<td><strong>Total personal expenses</strong></td>
<td></td>
</tr>
</tbody>
</table>

#### Business expenses (actually paid), Provide current general ledger and profit / loss.

<table>
<thead>
<tr>
<th></th>
<th></th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>71.</td>
<td>Materials purchased (specify)</td>
<td></td>
</tr>
<tr>
<td>72.</td>
<td>Supplies (specify)</td>
<td></td>
</tr>
<tr>
<td>73.</td>
<td>Installment payments (specify)</td>
<td></td>
</tr>
<tr>
<td>74.</td>
<td>Monthly payments (specify)</td>
<td></td>
</tr>
<tr>
<td>75.</td>
<td>Rent / mortgage</td>
<td></td>
</tr>
<tr>
<td></td>
<td>If renting—name, address, and phone number of landlord</td>
<td></td>
</tr>
<tr>
<td>76.</td>
<td>Insurance</td>
<td></td>
</tr>
<tr>
<td>77.</td>
<td>Business utilities: Electric: (</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Natural gas / oil: (</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Phone, internet, &amp; cable: (</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Garbage: (</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Water / sewer: (</td>
<td></td>
</tr>
<tr>
<td>78.</td>
<td><strong>Net wages and salaries paid to employees</strong></td>
<td></td>
</tr>
<tr>
<td>79.</td>
<td>Current taxes (payroll / business)</td>
<td></td>
</tr>
<tr>
<td>80.</td>
<td>Other: Specify: (do not include unsecured debt)</td>
<td></td>
</tr>
<tr>
<td>81.</td>
<td><strong>Total business expenses</strong></td>
<td></td>
</tr>
</tbody>
</table>

#### Net disposable income (line 54 minus lines 70 and 81)

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>82.</td>
<td><strong>Net disposable income</strong></td>
<td></td>
</tr>
</tbody>
</table>

### Section 6. Settlement offer calculations

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>83.</td>
<td>Net disposable income from line 82 (if less than -0-, enter -0-)</td>
<td></td>
</tr>
<tr>
<td>84.</td>
<td>Disposable income formula (line 83 x 12.0)</td>
<td></td>
</tr>
<tr>
<td>85.</td>
<td>Total value of all immediate assets and real property equity from line 27 (if less</td>
<td></td>
</tr>
<tr>
<td></td>
<td>than -0-, enter -0-)</td>
<td></td>
</tr>
<tr>
<td>86.</td>
<td>Assets and equity formula (line 85 x 0.75)</td>
<td></td>
</tr>
<tr>
<td>87.</td>
<td><strong>Total settlement offer amount</strong> (add lines 84 and 86)</td>
<td></td>
</tr>
</tbody>
</table>

#### Payoff information

When will you pay the remainder of this settlement offer? (check one)

- [ ] Within 30 days from the date of Department of Revenue’s acceptance letter.
- [ ] In 12 equal monthly installments. Day of month you want your installment payments due: _____________________________

Will you borrow the settlement offer amount (line 87)?

- [ ] Yes
- [ ] No

**$**
Section 6. (continued) Settlement offer calculations

Payoff information (Continued)
If yes, provide lender's name, address, phone; list all collateral, if any, pledged to secure the loan.

<table>
<thead>
<tr>
<th>Lender information</th>
<th>Collateral</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name</td>
<td></td>
</tr>
<tr>
<td>Mailing address</td>
<td>City</td>
</tr>
<tr>
<td></td>
<td>State</td>
</tr>
<tr>
<td></td>
<td>ZIP code</td>
</tr>
<tr>
<td>Phone</td>
<td>(          )</td>
</tr>
<tr>
<td>Is lender a member of your household or immediate family?</td>
<td>Yes</td>
</tr>
</tbody>
</table>

Tax debts included in settlement offer. Check all that apply.

<table>
<thead>
<tr>
<th>Tax type</th>
<th>Social Security number or business identification number</th>
<th>Years/quarters</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal income tax</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Business tax</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other (explain)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Section 7. Additional information
Please provide any additional information not already included. Attach additional pages as needed. All household income must be included.

__________________________________________________________________________
__________________________________________________________________________
__________________________________________________________________________
__________________________________________________________________________
__________________________________________________________________________
__________________________________________________________________________
__________________________________________________________________________

__________________________________________________________________________

__________________________________________________________________________
Terms and conditions

By making this offer, I understand and agree to these terms and conditions:

1. If I don’t meet all of the terms and conditions of this offer, the Department of Revenue will cancel the settlement offer and collect the full amount of my debt, including interest and penalties.
2. I will voluntarily submit all settlement offer payments.
3. The Department of Revenue will apply all payments, refunds, or credits it receives before my settlement offer is approved to my debt and not to the settlement offer amount.
4. If I have a current payment plan for this debt, I will continue making payments, as agreed, while this offer is pending.
5. I forfeit my right to appeal [Oregon Revised Statute (ORS) 305.280(3)].
6. For three years from the date I pay the settlement offer amount in full, I will file all returns and pay all taxes due. I will pay any tax debt in full within 90 days from the date of the notice I receive from the department. If I don’t, I violate this settlement offer agreement and the Department of Revenue will collect the full debt amount.
7. I authorize the Department of Revenue to contact third parties (IRS, Department of Employment, credit reporting firms, etc.) to verify information I provided in the settlement offer application.
8. The Department of Revenue will release any tax liens on my property after a three year compliance period is complete.

Taxpayer agreement and authorization to use credit reports

I read and agree to the above terms and conditions. Under penalties of perjury, I declare that I examined this offer, including all attached documentation, and to the best of my knowledge and belief, it is true, correct, and complete. I (we) authorize the Oregon Department of Revenue to use credit reports and other tools to verify any information in this settlement offer application and for collection purposes.

SIGN HERE

Your signature

Date

Spouse/RDP signature (if applying jointly, BOTH must sign even if only one had income)

Date

Return your completed application, documentation, and 5-percent payment to:

Oregon Department of Revenue

PO Box 14725

Salem OR 97309-5018

Did you include everything?

Before mailing, please review your application to make sure it’s complete and includes all supporting documentation. We’ll return your application if you don’t sign it or include payment; are appealing your tax debt; or haven’t filed all required tax returns (see page 2).

Did you...

1. Include a 5-percent payment with this application?
2. Sign the taxpayer agreement and authorization to use credit reports (above)? If applying jointly, did your spouse/RDP sign it?
3. Complete the Tax Information Authorization and Power of Attorney for Representation form, if needed?
4. Make a copy of this application for your records?

If you answered yes to each question, included all supporting documentation, meet all the conditions for qualifying (page 2), you’re ready to submit your application. We’ll contact you within 10 business days to let you know we received it.

If you need to contact us, see page 5.
Chapter 4—Tax Collection Issues

Tax Information Authorization and Power of Attorney for Representation

• Please print. • Use only blue or black ink. • See additional information on the back.

For office use only

Date received

Taxpayer name

Identifying number (SSN, BIN, FEIN, etc.)

Spouse’s name, if joint return

Spouse’s identifying number (SSN, etc.)

Address

City

State

ZIP code

Check only one:

☐ Tax Information Authorization: Checking this box allows the department to disclose your confidential tax information to your designee. You may designate a person, agency, firm, or organization.

☐ Power of Attorney for Representation: Check this box if you want a person to “represent” you. This means the person may receive confidential information and may make decisions on your behalf. The person you designate must meet the qualifications listed on the back of this form.

For ☐ All tax years, or ☐ Specific tax years: ____________________________

I hereby appoint the following person as designee or authorized representative:

Name

Phone

Fax

Mailing address

City

State

ZIP code

Representative’s title and Oregon license number or relationship to taxpayer

If out-of-state CPA, sign here attesting you meet the requirements to practice in Oregon (see instructions)

The above named is authorized to receive my confidential tax information and/or represent me before the Oregon Department of Revenue for:

☐ All tax matters, or ☐ Specific tax matters. Enter tax program name(s): ______________________________________________________________________

Signature of taxpayer(s)

☐ I acknowledge the following provision: Actions taken by an authorized representative are binding, even if the representative is not an attorney. Proceedings cannot later be declared legally defective because the representative was not an attorney.

☐ Corporate officers, partners, fiduciaries, or other qualified persons signing on behalf of the taxpayer(s): By signing, I also certify that I have the authority to execute this form.

☐ If a tax matter concerns a joint return, both spouses must sign if joint representation is requested. Taxpayers filing jointly may authorize separate representatives.

Signature

Print name

Date

Title (if applicable)

Daytime phone

( )

Spouse (if joint representation)

Print name

Date

X

Note: This authorization form automatically revokes and replaces all earlier tax authorizations and/or all earlier powers of attorney on file with the Oregon Department of Revenue for the same tax matters and years or periods covered by this form. If you do not want to revoke a prior authorization, initial here ______.

Attach a copy of any other tax information authorization or power of attorney you want to remain in effect.

Complete the following, if known (for routing purposes only):

Revenue employee: __________________________________________________

Division/Section: __________________________________________________________

Phone/Fax: ________________________________________________________________

Send to: Oregon Department of Revenue

955 Center St NE

Salem OR 97301-2555

Visit www.oregon.gov/dor to complete this form using Revenue Online.

If this tax information authorization or power of attorney form is not signed, it will be returned.

Power of attorney forms submitted with Revenue Online will be signed electronically.

150-800-005 (Rev. 12-15)

Broadbrush Taxation: Tax Law for the Non–Tax Attorney

4–74
Additional information

This form is used for two purposes:

- **Tax information disclosure authorization.** You authorize the department to disclose your confidential tax information to another person. This person will not receive original notices we send to you.

- **Power of attorney for representation.** You authorize another person to represent you and act on your behalf. The person must meet the qualifications below. Unless you specify differently, this person will have full power to do all things you might do, with as much binding effect, including, but not limited to: providing information; preparing, signing, executing, filing, and inspecting returns and reports; and executing statute of limitation extensions and closing agreements.

This form is effective on the date signed. Authorization terminates when the department receives written revocation notice or a new form is executed (unless the space provided on the front is initiated indicating that prior forms are still valid).

Unless the appointed representative has a fiduciary relationship to the taxpayer (such as personal representative, trustee, guardian, conservator), original Notices of Deficiency or Assessment will be mailed to the taxpayer as required by law. A copy will be provided to the appointed representative when requested.

For corporations, “taxpayer” as used on this form, must be the corporation that is subject to Oregon tax. List fiscal years by year end date.

**Qualifications to represent taxpayer(s) before Department of Revenue**

Under Oregon Revised Statute (ORS) 305.230 and Oregon Administrative Rule (OAR) 150-305.230, a person must meet one of the following qualifications in order to represent you before the Department of Revenue.

1. For all tax programs:
   a. An adult immediate family member (spouse, parent, child, or sibling).
   b. An attorney qualified to practice law in Oregon.
   c. A certified public accountant (CPA) or public accountant (PA) qualified to practice public accountancy in Oregon, and their employees.
   d. An IRS enrolled agent (EA) qualified to prepare tax returns in Oregon.
   e. A designated employee of the taxpayer.
   f. An officer or full-time employee of a corporation (including a parent, subsidiary, or other affiliated corporation), association, or organized group for that entity.
   g. A full-time employee of a trust, receivership, guardianship, or estate for that entity.
   h. An individual outside the United States if representation takes place outside the United States.

2. For income tax issues:
   a. All those listed in (1); plus
   b. A licensed tax consultant (LTC) or licensed tax preparer (LTP) licensed by the Oregon State Board of Tax Practitioners.
   c. A consulting forester.
   d. An authorized agent for designated utilities and companies assessed by the department under ORS 308.505 through 308.665 and ORS 308.805 through 308.820.

3. For ad valorem property tax issues:
   a. All those listed in (1); plus
   b. An Oregon licensed real estate broker or a principal real estate broker; or
   c. An Oregon certified, licensed, or registered appraiser; or
   d. An authorized agent for designated utilities and companies assessed by the department under ORS 308.505 through 308.665 and ORS 308.805 through 308.820.

4. For forestland and timber tax issues:
   a. All those listed in (1), (2), and (3)(b) and (c); plus
   b. A consulting forester.

An individual who prepares and either signs your tax return or who is not required to sign your tax return (by the instructions or by rule), may represent you during an audit of that return. That individual may not represent you for any other purpose unless they meet one of the qualifications listed above.

Generally, declarations for representation in cases appealed beyond the Department of Revenue must be in writing to the Tax Court Magistrate. A person recognized by a Tax Court Magistrate will be recognized as your representative by the department.

**Tax matters partners and S corporation shareholders.** See OARs 150-305.242(2) and (5) and 150-305.230 for additional information. Include the partnership or S corporation name in the taxpayer name area.

**Out-of-state attorneys and CPAs**

Attorneys may contact the Oregon State Bar for information on practicing in Oregon. If your out-of-state representative receives authorization to practice in Oregon, attach proof to this form.

CPAs may practice in Oregon if they meet the following substantial equivalency requirements of ORS 673.010:

1. Licensed in another state;
2. Have an accredited baccalaureate degree with at least 150 semester hours of college education;
3. Passed the Uniform CPA exam; and
4. Have a minimum of one year experience.

**Have questions? Need help?**

**General tax information**

Salem: ......................................................... (503) 378-4988
Toll-free from an Oregon prefix..............1 (800) 356-4222

**Asistencia en español:**

En Salem o fuera de Oregon ....................(503) 378-4988
Gratis de prefijo de Oregon .................1 (800) 356-4222

**TTY (hearing or speech impaired; machine only):**

Salem area or outside Oregon .............(503) 945-8617
Toll-free from an Oregon prefix............1 (800) 886-7204

**Americans with Disabilities Act (ADA):** Call one of the help numbers above for information in alternative formats.
Chapter 5

Leverage the Benefits of Teamwork Between Attorneys and CPAs—Presentation Slides

Shawn Bargouti, CPA, CISA
US Tax Services
Portland, Oregon

Hertsel Shadian
Hertsel Shadian Attorney at Law LLC
Tualatin, Oregon
LEVERAGE THE BENEFITS OF TEAM WORK
Between Attorneys and CPAs

AGENDA

• When should an attorneys and a CPA work together?
• What to watch out for
• Strategies for working together and communicating
• Best Practices
• Questions
WHEN SHOULD AN ATTORNEY AND A CPA WORK TOGETHER?

- Determining Entity Type and Structure
- Drafting Operating Agreements
- IRS Audit Representation
- Mergers, Acquisitions and Joint Ventures
- Succession Planning
- Disputes Among Owners
- Banking and Surety Credit Agreements
- Other

DETERMINING ENTITY TYPE AND STRUCTURE

Attorneys
Type of business
Legal Liability/Protection
Personal assets
Type of Owners
Tax Implications

CPAs
Tax Implications
Cash flow
Distributions
Process and Controls
Nature timing and extent of transactions
Chapter 5—Leverage the Benefits of Teamwork Between Attorneys and CPAs—Presentation Slides

**DRAFTING OPERATING AGREEMENTS, ARTICLES OF INCORPORATION**

**Attorneys**
- Formation Document
- Organization Documents
- Legal Liability/Protection
- Control/Management/Voting
- Capital/Funding
- Tax Provisions

**CPAs**
- Tax Implications
- Inside/Outside Basis of Contributed Property
- Percentage Ownership
- Member Managed/Manager Managed

**IRS AUDIT REPRESENTATION**

**Attorneys**
- Legal Arguments
- Issues Management
- Litigation Prep (privilege issues)
- Appeals
- Tax Court

**CPAs**
- Tax issues and tax returns filed
- Documentation and support
- Audit trail of transactions
- Completeness and accuracy
MERGERS, ACQUISITIONS AND JOINT VENTURES

**Attorneys**
- Due Diligence Performance
- Purchase and Sale Agreement
- Buy-Sell Provisions
- Consultation Agreements
- Indemnification
- Non-Competition

**CPAs**
- Nature, timing and extent of transaction
- GAAP accounting
- Valuation consideration
- Financial assumptions
- Goodwill

SUCCESSION PLANNING

**Attorneys**
- Wills
- Trusts
- Charitable Giving Planning
- Buy-Sell Agreements
- Shareholder Agreements

**CPAs**
- Inheritance and gift taxes
- Continuity of business
- Financial statements and disclosures
DISPUTE AMONG OWNERS

Attorneys
- Buy-Sell Enforcement
- Management/Control
- Business “Divorce”
- Asset Distribution & Division

CPAs
- Partners’ basis
- Continuity of business
- Tax implications

OTHER
- Forensic audits
- Payroll audit and issues
- Corporate policies and procedures
- Retirement plans audit and issues
- Sarbanes Oxley (Process, controls, disclosures, certification)
- Bankruptcy Matters
### WHAT TO WATCH OUT FOR

<table>
<thead>
<tr>
<th>Topic</th>
</tr>
</thead>
<tbody>
<tr>
<td>Client confidentiality and privilege (see points below)</td>
</tr>
<tr>
<td>Client/management representation</td>
</tr>
<tr>
<td>Clear and specific engagement letter</td>
</tr>
<tr>
<td>Primary vs. secondary relationship</td>
</tr>
<tr>
<td>Professional standards and code of conduct and ethics</td>
</tr>
<tr>
<td>“Kovel Doctrine”: U.S. v. Kovel, 296 F.2d 918, 922, 96 A.L.R.2d 116 (2d Cir. 1961) (accountant hired by tax firm to assist in interpreting client conversations was considered privileged agent).</td>
</tr>
<tr>
<td>IRC § 7525: Confidentiality privileges relating to taxpayer communications (extending privilege to CPA)</td>
</tr>
</tbody>
</table>

### BEST PRACTICES

<table>
<thead>
<tr>
<th>Topic</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clearly defined engagement letter</td>
</tr>
<tr>
<td>Set the expectations early and often</td>
</tr>
<tr>
<td>Act as support when needed, and lead when required (i.e., delegating tasks between each professional and maximizing value and efficiency for the client)</td>
</tr>
<tr>
<td>Leveraging the respective strengths of each professional and knowing when “to stay in your lane”</td>
</tr>
<tr>
<td>Act within professional standards always</td>
</tr>
<tr>
<td>Document, document and document</td>
</tr>
<tr>
<td>For lawyers: don’t assume you can be a CPA</td>
</tr>
<tr>
<td>Ethical considerations in cross-over representation, including the limits of CPA-client privilege</td>
</tr>
<tr>
<td>Cross-referrals and cross-marketing between the professionals</td>
</tr>
</tbody>
</table>
QUESTIONS?

I will not ask dumb questions
I will not ask dumb questions
I will not ask dumb questions
I will not ask dumb questions
I will not ask dumb questions
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I will not ask dumb questions
I will not ask dumb questions
I will not ask dumb questions
I will not ask dumb questions
I will not ask dumb questions
I will not ask dumb questions

QUESTIONS?
Chapter 6
Successor Liability for Taxes: I Have to Pay What?!

Caitlin Wong
CW Law
Portland, Oregon

RESERVED FOR HANDOUT—MATERIALS FOR THIS PRESENTATION WERE NOT SUBMITTED IN TIME FOR PUBLICATION
Chapter 7
Hot Topics in 1031 Exchanges

Jeneé Hiliard
Miller Nash Graham & Dunn LLP
Portland, Oregon

Contents

1. The Basics of 1031 Exchanges .................................................. 7–1
   1.1 Definitions ............................................................................ 7–1
   1.2 Deadlines ............................................................................ 7–1
   1.3 Requirements ....................................................................... 7–1

2. Related-Party Exchanges ............................................................ 7–2
   2.1 Who Is Related? .................................................................... 7–2
   2.2 Indirect/Constructive Ownership for Individuals ................. 7–2
   2.3 Indirect/Constructive Ownership for Entities ...................... 7–2
   2.4 General Rule ......................................................................... 7–2
   2.5 Exceptions ............................................................................ 7–3
   2.6 Exception to the Exception .................................................... 7–3
   2.7 Planning Opportunities ........................................................ 7–3
   2.8 Do Not .................................................................................. 7–4
   2.9 Private Letter Rulings .......................................................... 7–4

3. Reverse Exchanges ...................................................................... 7–4
   3.1 Generally ............................................................................. 7–4
   3.2 Benefits of a Reverse Exchange .......................................... 7–4
   3.3 Mechanics of a Reverse Exchange ....................................... 7–5
   3.4 Safe Harbor Reverse Exchanges .......................................... 7–5
   3.5 Permissible Agreements in Safe-Harbor Reverse Exchanges .. 7–6
   3.6 Typical Structural Elements of Reverse Exchanges ............ 7–7
   3.7 Non-Safe Harbor Reverse Exchanges ................................... 7–8

4. Improvement Exchanges (A Subset of Reverse Exchanges) ....... 7–9
   4.1 Generally ............................................................................. 7–9
   4.2 Benefits .............................................................................. 7–9
   4.3 Holdback Credits Do Not Work ......................................... 7–9
   4.4 Identification of Replacement Property .............................. 7–9
   4.5 Property Not Completed ...................................................... 7–9
   4.6 Exchange Period Issues ...................................................... 7–9
   4.7 Construction Contract and Exchange Agreement ............... 7–10
   4.8 Improvements to Exchanger’s Own Property ..................... 7–10

5. General Tips and Advice ............................................................ 7–10
   5.1 Clear Scope of Engagement ................................................ 7–11
   5.2 Expensive ........................................................................... 7–11
   5.3 Emphasize Shortness of Timelines .................................... 7–11
   5.4 Roles of Attorneys and Accountants .................................. 7–11
   5.5 Exelon Corp. ....................................................................... 7–11

Presentation Slides ....................................................................... 7–13
1. **The Basics of 1031 Exchanges**

1.1 **Definitions**

   (a) **Accommodator.** An accommodator is an entity that serves as a qualified intermediary in a tax-free exchange. The accommodator can be a seller, buyer, contractor, or developer. Most accommodators are corporations or limited liability companies whose only function is to act as intermediaries in tax-free exchanges.

   (b) **Relinquished Property.** The property owned by the exchanger/taxpayer that will be conveyed to the accommodator and then sold to the buyer in the exchange.

   (c) **Replacement Property.** The property owned by the seller that will be purchased by the accommodator and conveyed to the exchanger/taxpayer in the exchange.

1.2 **Deadlines.** The taxpayer has 45 days to designate replacement property and 180 days to complete the exchange. These deadlines run concurrently and are not flexible. Failure to meet either deadline will result in a fully-taxable transaction.

1.3 **Requirements.** IRC Section 1031 is an exception to the general rule that gain must be recognized on the sale or other disposition of property. Section 1031 provides that no gain or loss will be recognized on the exchange of property held in a trade or business or for investment for like-kind property.

   (a) **Qualified Property.** Both the property sold and the property purchased in a tax-free exchange must be held either for investment or for productive use in a trade or business. Certain excluded property will not qualify for exchange treatment, including property held for sale, stocks, bonds, notes, securities, and partnership interests. In *Exelon Corp. v. Comm'r*, 147 T.C. No. 9 (Sept. 19, 2016), the taxpayer's replacement property was a long-term lease of a power plant that was leased back to the owner of the power plant; the structure of the transaction was recharacterized as a loan and the exchange was invalidated and over $87 million in accuracy-related penalties were imposed in addition to over $430 million in income tax deficiencies.

   (b) **Like Kind.** The property transferred and the property received must be of like kind for the exchange to be nontaxable. All real property located in the United States is like-kind to other real property located in the United States.

   (c) **Exchange.** There must be an exchange of property.

   (d) **Boot Treatment.** If property that is not qualified or not of a like kind is received, it is treated as boot. Receipt of boot will not disqualify an exchange, but the boot will be taxed to the exchanger to the extent of the gain realized. Treas Reg § 1.1031(b)-1.
2. Related-Party Exchanges.

2.1 Who Is Related?

(a) An individual is related to his/her spouse, siblings, kids, grandkids, grandparents, and great grandparents.

(b) A partner and a partnership are related if the partner owns (directly or indirectly) more than 50 percent of capital or profits interests in the partnership.

Example: Jack and Jill are friends and own Water LLC. Jack owns 49 percent of the company and Jill owns 51 percent of the company. Water LLC is not related to Jack because he owns less than 50 percent of the company, but Water LLC is related to Jill because she owns more than 50 percent of the company.

(c) A shareholder and a corporation are related if the shareholder owns (directly or indirectly) more than 50 percent of the outstanding stock in the corporation.

(d) Two partnerships are related if they have common ownership (direct or indirect) of more than 50 percent of capital or profits interests in the partnership.

Example: In addition to owning Water LLC, Jack and Jill own Fetch-a-Pail LLC. Jack owns 49 percent of Fetch-a-Pail LLC and Jill owns 51 percent. Water LLC is not related to Jack (because he owns less than 50 percent of the company), but Water LLC is related to Jill because she owns more than 50 percent of the company. Water LLC and Fetch-a-Pail LLC are related partnerships because they are under 100 percent common ownership.

(e) Two corporations are related if they have common ownership (direct or indirect) of more than 50 percent of the total combined voting power of all classes of stock or more than 50 percent of the total value of shares of all classes of stock.

2.2 Indirect/Constructive Ownership for Individuals. Individuals are treated as owning the entity ownership interests owned by their spouse, siblings, parents, kids, etc.

Example: Jill's mom will be treated as if she owns Jill's 51 percent of Water LLC (for purposes of determining if Jill's mom is related to Water LLC). This means that Jill's mom is related to Water LLC for 1031 purposes.

2.3 Indirect/Constructive Ownership for Entities. Ownership interests owned by an entity are treated as being owned proportionately by the entity's shareholders or partners.

Example: If Water LLC is the sole member of Hill LLC, Jack will be treated as owning 49 percent of Hill LLC and Jill will be treated as owning 51 percent of Hill LLC, even though neither Jack nor Jill actually own any direct membership interests in Hill LLC.

2.4 General Rule. An exchange between related parties will be fully taxable to each party if either party disposes of the exchange property within two years. § 1031(f)(1). This means that generally a taxpayer cannot purchase its replacement property from a related party.
2.5 Exceptions. There are exceptions to the general rule that a related party exchange will be fully taxable if either party disposes of the exchange property within two years. Exceptions to the rule arise if one of the related parties dies, the exchange property is condemned or otherwise involuntarily converted, or the exchange and disposition of exchange property were not done for the primary purpose of avoiding income taxes. If an exception applies, the two-year holding rule is ignored. The IRS has found that disposition of exchange property within the two-years was permissible when:

(a) No tax would have been due even if the parties had not completed the exchange;
(b) Neither party cashed out of their investment in real estate;
(c) The parties were rearranging tenant-in-common interests;
(d) The transaction was principally motivated by a non-tax reason (e.g., resolving business disputes); or
(e) The transactions did not constitute basis shifting transactions.

2.6 Exception to the Exception. However, the related-party rules cannot be avoided by a transaction or series of transactions intended to avoid the application of the rules. IRC 1031(f)(4). This means that if an exception applies but the exception applies only as a result of a series of steps or transfers taken solely for the purpose of avoiding the application of the related–party rules, the exchanges will be fully taxable.

2.7 Planning Opportunities

(a) A transaction can be structured using trusted unrelated parties, such as domestic partners, step parents or step children, cousins, aunts and uncles, in-laws, ex-spouses, and entities with no more than 50 percent common ownership, rather than using related parties.

(b) The exchanger could sell the relinquished property to an unrelated party and acquire replacement property from a related party if the related party completes its own exchange and both parties hold replacement properties for at least two years. See PLR 200810017; PLR 200616005; PLR 200440002; PLR 200820025; and PLR 200820017. In such a transaction, you could consider having the related party sign an indemnification agreement covering the tax liability of the exchanger in the event the related party fails to hold its replacement property for at least two years. The rationale to support this transaction is that both related parties remained invested in real property so neither party "cashed out" their investment. Note: Although instructive of the IRS's current views and interpretation of the law, private letter rulings are binding only on the taxpayer to whom they are issued and cannot be relied on by any other party.

(c) The exchanger could swap his undivided interests in property with a related party if each party to the transaction ends up with 100 percent ownership of a smaller parcel instead of an undivided interest in a larger parcel, even if one party intends to sell some or all of its replacement property within two years. See PLR 200730002; PLR 200706001;
PLR 199926045. The rationale to support this transaction is that the transaction was motivated primarily for business purposes and not tax avoidance purposes.

(d) The exchanger could sell his relinquished property to a related party and acquire replacement property from an unrelated party, even if the related party will dispose of the relinquished property within two years. See PLR 200712013; PLR 200709036. The rationale to support this transaction is that there was no cashing out by the related party because the related party began the transaction with cash instead of property and would ultimately end up with cash instead of property. However, in my view, it does seem like this transaction could be subject to an attack as an impermissible basis-shifting transaction.

2.8 Do Not. A taxpayer should not purchase replacement property from a related party if the related party does not complete its own exchange. The rationale to support this prohibition is that such a transaction would result in the related party "cashing out" its investment in property and often results in basis shifting. See Ocmulgee Fields, Inc. v. Comm'r, 613 F3d 1360 (11th Cir. 2010); Teruya Brothers Ltd. v. Comm'r, 580 F3d 1038 (11th Cir 2009); TAM 200126007; TAM 9748006. The Malulani Group, Limited and Subsidiary v. Comm'r, TC Memo 2016-209, reconfirmed that an impermissible "cashing out" occurs if a taxpayer acquires its replacement property from a related party if the aggregate tax paid by the taxpayer and the related party is less than the tax the taxpayer would have paid if it had not completed an exchange; this is true even when the taxpayer asserts that the acquisition of the replacement property from a related party was not part of a prearranged plan.

2.9 Private Letter Rulings. The IRS no longer intends to routinely issue determinations regarding whether a related-party exchange is principally motivated by tax avoidance purposes, or a related-party exchange is part of a transaction or series of transactions structured to avoid the related-party exchange rules. However, the IRS will continue to issue determinations regarding an exchange of undivided interests and dispositions of property in a nonrecognition transaction.

3. Reverse Exchanges

3.1 Generally. In a typical deferred-forward exchange, the relinquished property is exchanged and sold first and the replacement property is acquired within 180 days of the sale of the relinquished property. In contrast, in a reverse exchange, an accommodator will hold title to either the relinquished property or the replacement property and enable the replacement property to be purchased before the relinquished property is sold. This is known as "parking" the property. Due to the extra cost and complexity of a reverse exchange, it should be attempted only if there is an absolute need to "park" the property.


(a) In a hot real estate market, when it can be difficult to acquire desirable replacement properties and it is expected that the relinquished property will sell quickly after it is listed for sale, a reverse exchange can be used to acquire the replacement property and then list the relinquished property for sale and sell it.
(b) Improvement exchanges (discussed in more detail below) are a type of reverse exchange that allow taxpayers to acquire real property improved to the taxpayer's specific specifications.

(c) A reverse exchange can be beneficial in situations where the taxpayer has chosen a replacement property and is interested in selling multiple relinquished properties but doesn't know which property will sell first. The taxpayer can designate multiple relinquished properties for the replacement property and complete the exchange with the first relinquished property to sell.

3.3 Mechanics of a Reverse Exchange. In a reverse exchange in which the replacement property is parked, the exchanger causes the EAT (defined in Section 3.4 below) to purchase the replacement property and the EAT holds the replacement property until the relinquished property is ready to be sold. When the relinquished property is ready to be sold, the exchanger is treated as though it transferred the relinquished property to the accommodator simultaneously in exchange for receipt of the replacement property from the EAT. This structure is the most common structure and is useful if the relinquished property is subject to a loan with a due on sale clause and if the lender for the acquisition of the replacement property is willing to be flexible and allow the EAT to be the borrower on the loan.

When the relinquished property is parked, the exchanger parks the relinquished property with the EAT on the date of the closing of the acquisition of the replacement property. The accommodator is treated as purchasing the replacement property and transferring it to the exchanger immediately at closing. At a later date, when the relinquished property is sold, the EAT sells the relinquished property to the buyer in completion of the exchange. This structure is typically used if the replacement property will be acquired before the relinquished property is sold and the lender for the replacement property insists that the exchanger be the borrower and not the EAT.

3.4 Safe Harbor Reverse Exchanges. Revenue Procedure 2000-37 provides a safe harbor for exchangers in structuring reverse tax-free exchanges. Prior to the issuance of Revenue Procedure 2000-37, there was a risk that an accommodator in a parking transaction could be deemed to be the taxpayer's agent and the exchange would then fail because it would be treated as a transaction between the taxpayer. However, Revenue Procedure 2000-37 provides that if the following six requirements are met, the IRS will not challenge (thus creating a "safe harbor") the characterization of property as relinquished property or replacement property in a tax-free exchange:

(a) Ownership. The property must be owned by an "exchange accommodation titleholder" (referred to in this outline as the "EAT") who is not the exchanger or a disqualified person as defined in Treas Reg § 1.1031(k)-1(k). In general, a disqualified person is a person who is not related to the exchanger. Additionally, if the parked property is replacement property, it cannot have been owned by the exchanger within the last 180 days. Rev Roc 2004-51. The EAT is often a single-member LLC in which the accommodator is the sole member. The EAT must either hold a deed to the parked property, be the a purchaser/vendee under a land estate contract, or be the lessee of a long-term ground lease with more than 30 years left on the lease term.
(b) **Intent.** The exchanger must have a bona fide intent that the property held by the EAT be used as either relinquished property or replacement property in a tax-free exchange. This requirement is the same as the requirement found for a traditional forward exchange. Treas Reg § 1.1031(k)-1(j)(2)(iv).

(c) **Required Contract Provisions.** The EAT and the exchanger must enter into an agreement providing that the EAT is "holding the property for the benefit of the exchanger in order to facilitate an exchange under section 1031" and Revenue Procedure 2000-37. The agreement must also provide that the EAT will be treated as the owner of the parked property for federal income tax purposes and that both parties will report the transaction in a manner consistent with the agreement. This agreement must be entered into no later than five business days after the parked property is transferred to the EAT.

(d) **Identification Requirement.** Within 45 days after the EAT acquires title to the parked replacement property, the relinquished property must be identified. The "identification must be made in a manner consistent with the principles described in section 1.1031(k)-1(c)." It is not clear whether this reference to the "principles" of the regulations refers only to issues such as signing and delivery of the designation, or whether it also refers to the number of replacement properties that can be designated. If so, one of three tests would have to be met: (i) not more than three relinquished properties can be designated, or (ii) more than three relinquished properties can be designated if their value does not exceed 200 percent of the value of the replacement property, or (iii) more than three relinquished properties can be designated if 95 percent of the value of all of the relinquished properties designated are actually used as relinquished property in the tax-free exchange. In Private Letter Ruling 200718028, exchanger had the accommodator acquire the replacement property, but failed within the 45-day period to identify the relinquished property. The IRS excused the failure because the relinquished property was actually sold within the 45-day period (even though the relinquished property was not otherwise identified).

(e) **Receipt Requirement.** Within 180 days after the EAT acquires title to the parked property, the property must be transferred to the exchanger as replacement property or to a buyer as relinquished property in a tax-free exchange.

(f) **Total Holding Period.** The combined period that the accommodator holds any parked property (relinquished property or replacement property) cannot exceed 180 days. This requirement is often problematic. Traditionally, a reverse exchange was often used to extend the 180-day period for completing improvements to replacement property. This strategy may not be available for an exchanger who elects to take advantage of Revenue Procedures 2000-37's safe harbor (but see discussion in Section 3.7 below re The Estate of Bartell).

3.5 **Permissible Agreements in Safe-Harbor Reverse Exchanges.** In addition to laying out the six requirements necessary to fall within the safe harbor, Revenue Procedure 2000-37 approves seven different types of legal relationships regardless of whether such arrangements include "arm's length" terms, including leases, purchase agreements, puts, and calls.
(a) **EAT as Accommodator.** An accommodator may serve as both the EAT and the qualified intermediary.

(b) **Loans.** The taxpayer may loan funds to the EAT or guarantee a loan to the EAT. The revenue procedure allows all of the permissible agreements to contain terms which are not arm's length terms. Thus, no interest needs to be charged on the loan to keep it within the revenue procedure's safe harbor. However, failing to charge interest may cause the loan to be subject to the imputed interest rules under IRC Section 7872.

(c) **Guaranty Arrangements.** The exchanger may guarantee the obligations of the EAT to purchase the parked property. The exchanger may also indemnify the EAT against costs and expenses.

(d) **Leasing Arrangements.** The parked property can be leased to the exchanger. Leasing the property from the EAT to the exchanger is very common in reverse exchanges. Exchangers don't need to be concerned about being charged market lease rates. For example, the lease amount might set rent at an amount equal to the mortgage payments against the parked property plus all other costs of holding the parked property.

(e) **Exchanger as Contractor.** The exchanger can manage the parked property or act as a contractor or supervisor to improve the parked property. These activities are also routinely done in traditional reverse exchanges that involve improvements to the replacement property. But an exchanger should not act as a contractor and receive a profit because that might be seen as a violation of the "G6 rules" (from Treas Reg § 1.1031(k)-1(g)(6)), which provide that an exchanger cannot withdraw funds held by an accommodator until the exchange is completed.

(f) **Purchase Agreements, Puts, and Calls.** The exchanger and the EAT may enter into purchase agreements, puts, and calls with respect to the parked property as long as they are for a period of not more than 185 days (5 days past the 180-day replacement period) from the EAT's acquisition of the parked property.

(g) **Arranging for Parking Relinquished Property.** In a parking arrangement, if the relinquished property sells for more than expected, the exchanger can recover the excess proceeds from the accommodator. Of course, unless such excess cash was used to purchase additional replacement property, the cash would be distributed to the exchanger would be taxable boot and must be distributed to the exchanger after the expiration of the 180-day exchange period.

3.6 **Typical Structural Elements of Reverse Exchanges.**

(a) **Loan.** If the exchanger has sufficient cash, the exchanger will lend the EAT the funds necessary to purchase the replacement property. It is, however, more common for financing to be required and for the financing to be obtained through a direct loan to the EAT from a bank, which is guaranteed by the exchanger, with the loan secured by the replacement property. Any third-party financing should contemplate and authorize the conveyance of the replacement property to the exchanger at the end of the exchange.
(b) **Option.** The exchange documentation should provide that the parked replacement property can be purchased from the EAT by the exchanger during the exchange period for the amount of money the EAT has spent to acquire and maintain the parked property.

(c) **Conveyance.** If the replacement property is parked with the EAT and the EAT is a single-member limited liability company, it can be advantageous to transfer title to the replacement property to the exchanger by assigning all of the membership interests in the EAT from the accommodator to the exchanger, rather than by the EAT deeding the property to the exchanger. This can eliminate recording costs, title insurance premiums, and potentially even transfer taxes.

3.7 **Non-Safe Harbor Reverse Exchanges.** Until recently, a reserve exchange structured outside the guidelines of the safe harbor of Revenue Procedure 2000-37, had a high risk of attack by the IRS. The IRS would take the position that the accommodator in the transaction was the agent for the exchanger. *See DeCleene v. Commissioner*, 115 TC 457, 470–71 (2000); Tech Ad. Mem 2000-39-005 (Sept. 29, 2000); and Priv Ltr Rul 2000111025 (Mar. 16, 2001). There are, however, a few cases that support reverse exchanges. They are *Biggs v. Comm'r of Internal Revenue*, 69 TC 905, 915–16 (1978), aff'd, 632 F2d 1171 (5th Cir 1980), *J. H. Baird Pub. Co. v. C.I.R.*, 39 TC 608 (1962). At the end of the day, this meant that non-safe harbor reverse exchanges were considered high-risk exchanges and to lower the risk, clients would proceed with a safe harbor exchange and attempt to construct as many improvements as humanly possible in 180 days.

However, in August 2016, *Estate of Bartell*, 147 TC No. 5, the Tax Court issued a taxpayer favorable ruling. In *Bartell*, the taxpayer instructed an EAT to acquire title to undeveloped real estate. The EAT held title to the real estate for 17 months (significantly longer than the 6 months allowed under Revenue Procedure 2000-37) and improved the property. Once the improvements were complete, the EAT leased the property to the exchanger until the relinquished property was eventually sold and the exchange completed. The Tax Court determined that because the taxpayer used a third-party exchange accommodator from the outset and at all times intended to complete a 1031 exchange, the taxpayer should be given latitude in structuring the exchange, even if though the accommodator held only bare legal title to the property and the taxpayer had most of the benefits and burdens of ownership.

However, before proceeding in structuring a reserve exchange in reliance on *Bartell* there are a few important facts to note. First, the facts of *Bartell* occurred before Revenue Procedure 2000-37 was effective and therefore the safe harbors of Revenue Procedure 2000-37 were not applicable. This means that the result could be different, even with the same facts, now that Revenue Procedure 2000 37 is applicable. Second, the IRS wasn't pleased with the result in *Bartell* and in August 2017, issued a statement stating that the IRS does not acquiesce to the decision in *Bartell*. *Action on Decision 2017-06, 2017-33 IRB*, Aug. 23, 2017. Although Actions on Decisions do not have precedential value, they do indicate the IRS's litigation strategy. In this case, the IRS has stated that it will not follow court decisions in cases where the exchanger does not meet the safe harbor requirements of Revenue Procedure 2000-37 unless the accommodator possesses the benefits and burdens of ownership. In any event, for an exchanger willing to push the envelope, *Bartell* could provide support in structuring non-safe harbor exchanges, which could make improvement exchanges a more viable option.
4. Improvement Exchanges (a subset of reverse exchanges)

4.1 Generally. An improvement exchange is an exchange in which the accommodator (who could be a professional corporate accommodator, seller, contractor, or developer) improves the replacement property before it is conveyed to the exchanger. However, it is most common for a professional accommodator to fill this role.

4.2 Benefits. An improvement exchange allows the exchanger to use tax-free dollars to build or repair replacement property to the exchanger's specifications. There are substantially higher transaction costs associated with completing an improvement exchange, however, including higher fees by most professional accommodators, and higher legal and accounting fees.

4.3 Holdback Credits Do Not Work. An approach instinctively utilized by many realtors and escrow companies to handle minor repairs to replacement property is to have repairs performed at the seller's or accommodator's expense after the replacement property is conveyed to the exchanger. This approach does not work because the exchanger is not receiving like-kind property when the exchanger receives post-closing repairs. Treasury Regulation Section 1.1031(k)-1(e)(4) specifically provides that "additional production occurring with respect to the replacement property after the property is received by the taxpayer will not be treated as the receipt of property of a like kind."

4.4 Identification of Replacement Property. In an improvement exchange, the replacement property, including the improvements to be constructed, must be identified. The identification will meet all requirements if the normal identification of the real property is made and if "as much detail is provided regarding construction of the improvements as is practicable at the time the identification is made." Treas Reg § 1.1031(k)-1(e)(2). If possible, the identification should include a full set of plans and specifications of the property to be constructed. If there are no plans and specifications in existence, it appears that whatever vague plans are in existence will satisfy the identification requirement.

4.5 Property Not Completed. The replacement property will qualify as like-kind property even if it is only partially constructed (e.g., 20 percent complete) when the replacement property is conveyed to the exchanger, provided the replacement property is real estate. However, the IRS takes the position that personal property will not be treated as like kind unless it is 100 percent complete as of the date it is conveyed to the exchanger. Treas Reg § 1.1031(k)-1(e)(5), examples (ii), (iii).

4.6 Exchange Period Issues. If using the Revenue Procedure 2000-37 safe harbor, all improvements must be completed and the property must be conveyed to the exchanger within the 180-day exchange period. This means that the cash held by the accommodator from the sale of the relinquished property must be invested by the accommodator in the purchase and improvement of the replacement property during the 180 days. Otherwise, the accommodator must release the remaining cash to the exchanger at the end of the 180-day as taxable boot. Cash cannot be consumed by simply prepaying construction expenses or having construction materials delivered to the jobsite. Prepaid expenses or materials delivered to the jobsite are not considered to be of like kind to real estate.
4.7 **Construction Contract and Exchange Agreement.** Typically, the EAT will enter into a construction contract with a contractor to build the improvements. The exchange agreement will provide that the EAT will convey the replacement property to the exchanger on the last day of the exchange period.

4.8 **Improvements to Exchanger's Own Property.**


(b) *Improvements to Land Owned by a Related Party.* The IRS has approved a transaction where an EAT leased bare land from a party related to the exchanger. The EAT constructed improvements on the land and the taxpayer purchased the improvements from the EAT and obtained an assignment of the lease. PLR 200251008. The rationale for the ruling was that both the taxpayer and the related party remain invested in real estate, neither party cashed out, the replacement property acquired by the taxpayer was only improvements (not fee title to the land), and the improvements were purchased by an unrelated EAT not from the related party.

(c) *Improvements to Leased Property Owned by the Exchanger.* In two liberal letter rulings, exchangers were permitted to lease property to avoid the rule that improvements to the exchanger's own property cannot qualify as replacement property in a tax-free exchange. Priv Ltr Rul 200329021 (July 18, 2003); Priv Ltr Rul 200251008 (Dec. 19, 2002). However, in 2004, Revenue Procedure 2000-37 was amended by Revenue Procedure 2004-51 to provide that the replacement property cannot have been owned by the exchanger within 180 days of the date that the replacement property was held by the accommodator. Revenue Procedure 2004-51 also provides that the IRS is "continuing to study parking transactions, including transactions in which a person related to the taxpayer transfers a leasehold in land to an accommodation party and the accommodations party makes improvements to the land and transfers the leasehold with the improvements to the taxpayer in exchange for other real estate." Thus, the IRS is studying this issue and the leasing technique described above can still be used until further guidance from the IRS is issued. However, there still is some risk that an IRS agent or court would not agree with this interpretation.

(d) *Improvements to Leased Land.* The IRS ruled that the exchange of other property owned by the exchanger for the accommodator's fee interest in the parking garage and the accommodator's lessee's interest in the 35-year lease qualified as a tax-free exchange. Priv Ltr Rul 8304022 (Oct. 22, 1982). The IRS also ruled that the exchange of real estate owned by the exchanger for the developer's 90-year lease and improvements to the leased property was a tax-free exchange, even though when the leasehold interest was acquired by the exchanger, the lease would terminate by operation of merger. Priv Ltr Rul 9243038 (July 27, 1992).

5. **General Tips and Advice**

5.1 **Clear Scope of Engagement.** Many exchanges are straight forward and when the tax-savings anticipated are not huge, tax-structuring advice is not necessarily cost-effective.
Even in these types of exchanges, complications can arise relating to co-ownership interests, properly completing 45-day designations, lending, and taxable boot. Any engagement should clearly identify the scope of work and, if relevant, list all areas outside the scope of work. Additionally, it is wise to clearly state in writing that the client is solely responsible for meeting all 1031 deadlines.

5.2 **Expensive.** Completing even a simple 1031 exchange can be expensive and can cause cash-flow issues. Helping clients understand this upfront is critical. For example, once the relinquished property is sold, rental income for that property will cease, but expenses related to the purchase of the replacement property (e.g., due diligence costs, legal fees, and lender fees) will continue to mount. Additionally, to properly minimize taxable boot, at the closing of the sale of the relinquished property the taxpayer should pay cash for certain prorated expenses, such as prorated rents and property taxes. Knowing this in advance can help the client set appropriate expectations and to address potential cash-flow issues in advance.

5.3 **Emphasize Shortness of Timelines.** It is important to emphasize and reemphasize to your client how quickly 45-days and 180 days can fly by. Encourage as much preparation and work be done before commencing an exchange as possible. It is ideal if the purchase agreement for replacement property can be entered into before the exchange period begins. Similarly, for improvement exchanges, it is ideal for all permits to be ready to be issued on the day the exchange begins. If possible, taxpayer's should target to wrap up due diligence and obtain a financing commitment on the replacement properties by the 45-day deadline, and try to close on the final leg of the exchange one or two weeks before the 180-day deadline. Unexpected issues arise; preplanning and not waiting until the last moment can help ensure these unexpected glitches don't result in a fully-taxable transaction to your client.

5.4 **Roles of Attorneys and Accountants.** On large transactions, a taxpayer will often involve an accountant and an attorney in planning. In small transactions, a client may only involve an accountant. A benefit of involving an attorney is that communications (including a written analysis regarding risk) can be covered by attorney-client privilege. A benefit of involving an accountant is that an accountant can weigh in on tax-reporting concerns and help quantify tax savings to be gained through an exchange. Attorneys can help document the transaction and advise the client on the legal risk. When advising clients in an exchange, you will want to be clear with the accountant and the client what your role will be. Be specific with your client about the level of oversight the client wants you to have on the transaction and based on that level of oversight, be clear with the client about what exchange and closing documents you want to review.

5.5 **Exelon Corp.** (discussed in Section 1.3(a) above) is a good reminder that for sophisticated clients, defective tax opinions may not be sufficient to overcome accuracy-related penalties.
Hot Topics in 1031 Exchanges

Presented by
Jeneé Hilliard, Partner
Miller Nash Graham & Dunn LLP

Presentation Outline

• The Basics of 1031 Exchanges
• Qualified Property and Exelon Corp.
• Reverse Exchanges
• Improvement Exchanges and Estate of Bartell
• Related-Parties
• Tips and Tricks
The Basics of 1031

Definitions
• Accommodator
• Relinquished Property
• Replacement Property

Deadlines
• 45-Day Identification Period
• 180-Day Exchange Period

Requirements
No gain or loss will be recognized on the exchange of property held in a trade or business or for investment for like-kind property held in a trade or business or for investment.

Roles of Team Members
• Accommodator
• Accountant
• Escrow Officer
• Exchanger/Taxpayer
• Lawyer
The Basics of 1031

![Diagram showing the process of a 1031 exchange]

Qualified Property

Property that cannot be exchanged:
- Stocks
- Partnership interests
- Bonds
- Notes
- Property held for sale/inventory
Qualified Property

Common Issues
• Drop and Swaps
• Swap and Drops
• Tenant in common interests
• Delaware Statutory Trusts (DSTs)

45-Day Designation

Identifying More than One Property
(Treas Reg § 1.1031(k)-1(c)(4))

• Designate 3 or fewer; or
• Designate any number as long as the aggregate value does not exceed 200 percent of the value of the relinquished property; or
• Designate any number as long exchanger acquires 95 percent of the value of the properties designated
Exelon Corp. v. Comm’r, 147 T.C. No. 9 (Sept. 19, 2016)

**Facts**
- 96 page tax court opinion
- Sold fossil fuel business assets
- Exchanged into long-term leasehold interests in power plants
- Owner of power plant leased the plant back from the taxpayer
- Rents were prepaid
- Subtenant had the option to buy-out the taxpayer for a pre-arranged price

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Exelon Corp. v. Comm’r – cont’d

**Facts**
- Taxpayer had asset appraisals by a big four accounting firm
- Taxpayer had two tax opinions from a national law firm (approximately 700 pages in the aggregate)
- Transaction failed substance over form inquiry and was fully taxable (over a $500 million deficiency)
- Over $87 million in accuracy-related penalties were assessed
Exelon Corp. v. Comm’r – cont’d

What Went Wrong?
• Lawyers were too involved and gave too much input on appraisal and conclusions needed—rendered appraisal worthless
• Everyone knew that the subtenant would exercise the purchase option and that exercising the option was the only economically feasible option
• Appraisal assumptions were inaccurate and the taxpayer knew that or should have known that

Exelon Corp. v. Comm’r – cont’d

What Went Wrong? – cont’d
• Only one taxpayer representative said he read the entire tax opinion
• The taxpayer didn’t acquire any significant or genuine attributes of ownership
• The money flowed in a circle and the taxpayer got 80 percent of its cash back in six months, which was more like a loan than a lease
• 1031 exchange disallowed and the taxpayer also had original issue discount on the “loan”
**Exelon Corp. v. Comm’r – cont’d**

*What Went Wrong? – cont’d*

- The owner of the power plant/subtenant of the taxpayer was exempt from income taxes
- “We cannot condone the procuring of a tax opinion as an insurance policy against penalties where the taxpayer knew or should have known that the opinion was flawed. A wink-and-a-smile is no replacement for independence when it comes to professional tax opinions.”

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**Reverse Exchanges**

*What is a reverse exchange?*

An accommodator will hold either the relinquished property or the replacement property (e.g., “parking”).
Reverse Exchanges – cont’d

Why use a reverse exchange?
• The purchase of the replacement property needs to close before the relinquished property sale is ready to close
• Improvements need to be made to the replacement property (aka an “improvement exchange”)
• Exchanger wants flexibility regarding which property will serve as relinquished property

Reverse Exchanges – cont’d

Considerations?
• Extra cost

• Increased complexity

• Financing issues
  o Who is the borrower
  o Due on sale clauses
  o Guaranties
Reverse Exchanges Illustrated

Mechanics – Parking Replacement Property

Reverse Exchanges – Rev Proc 2000-37

Safe Harbor Requirements

- Qualified indicia of ownership
- Bona fide intent
- Enter into a qualified exchange accommodation agreement within 5 days
- 45-day identification
- 180-day receipt deadline
- 180-day parking limit
Reverse Exchanges – Rev Proc 2000-37

Permissible Arrangements
- Accommodator can serve as the EAT
- Taxpayer can loan funds to EAT or guaranty loans to EAT on non-market terms
- Taxpayer can lease property from EAT on non-market terms
- Taxpayer can serve as contractor or property manager
- Exchanger or EAT may have call or put for term not exceeding 185 days

Reverse Exchanges – Structuring

- Exchanger should have purchase option
- Assignment of the membership interests in the EAT at closing is often easiest
  - Simple documentation
  - No recording costs
  - No additional title premiums
  - Might avoid transfer taxes
Chapter 7—Hot Topics in 1031 Exchanges

Improvement Exchanges

What is an improvement exchange?
A third party (often an accommodator) improves the replacement property before it is conveyed to the exchanger.

Benefits
Allows the exchanger to use tax-free dollars to build or repair replacement property to the exchanger's specifications

Considerations
• Cost
• 180 day timeline (if using safe harbor)
• Up to two year timeline (if using Bartell)
• Financing
• Complexity
• Obtaining permits and approvals
Improvement Exchanges – Rules

• Holdback credits do not work

• Prepaying for materials or labor does not work

• Identification of replacement property must include identification of improvements

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Improvement Exchanges – Rules Cont’d

• Improvements do not need to be completed by the 180-day, but the taxpayer only gets exchange credit for what has been completed at the time the property is conveyed to the taxpayer.

• A taxpayer cannot improve his/her own land (or land he/she owned 180 days before the exchange)
Improvement Exchange – cont’d

Opportunity

- Related party leases land to EAT on long-term ground lease at fair market rent
- EAT constructs improvements on the land
- Taxpayer purchases the improvements from the EAT and obtains an assignment of the lease

**Rationale:** Does not violate prohibition on property previously owned by taxpayer; is not a related party exchange because related party still owns the underlying land

---

Estate of Bartell, 147 T.C. No. 5, Aug. 2016 (but note that IRS issued notice of nonacquiescence)

- Drugstore with multiple locations sold properties and wanted to construct new retail buildings
- 180 days was too short to complete construction
- Accommodator formed EAT, took title to property and constructed improvements
- **17 months later** the exchange was completed
- The tax court didn’t evaluate whether the EAT had benefits and burdens of ownership and upheld the exchange
Improvement Exchange – cont’d

Estate of Bartell – Cont’d
• Opportunity: Non-safe harbor reserve exchanges may be okay —could allow more taxpayers to take advantage of improvement exchanges
• Risk: Exchange took place before Rev Proc 2000-37 was effective
• Risk: IRS issued notice of nonacquiescence (2017-33 IRB) and Action on Decision (AOD 2017-06, Aug. 24, 2017) essentially stating that Rev Proc 2000-37 must be followed if taxpayer will have benefits and burdens of ownership

Who is Related?

Individuals
• Spouse
• Siblings
• Kids, grandkids, etc.
• Parents, grandparents, great grandparents, etc.
Who is Related?

Entities and Individuals

• Partner/Partnership: partner owns (directly or indirectly) more than 50% of capital or profits interests in the partnership

• Shareholder/Corporation: shareholder owns (directly or indirectly) more than 50% of outstanding stock in the corporation

Who is Related?

Indirect/Constructive Ownership

Individuals are treated as owning the ownership interests owned by their spouse, siblings, parents, kids, etc.

Ownership interests owned by an entity are treated as being owned proportionately by the entity’s shareholders or partners.
Related Party Rules

**General Rule**
An exchange between related parties will be fully taxable to each party if either party disposes of exchange property within two years. §1031(f)(1).

Related Party Rules—cont’d

**Exceptions**
• Death of either party
• Involuntary conversion (e.g., condemnation)
• The exchange and disposition of exchange property were not done for the primary purpose of avoiding income taxes

*If an exception applies, the two-year holding requirement is ignored*
Related Party Rules—cont’d

Exception to the Exception (§1031(f)(4))
The related-party rules cannot be avoided by a transaction or series of transactions intended to avoid the application of the rules.

What is a Non-Tax Avoidance Purpose?

• No tax would have been due anyway
• Neither party cashes out
• Rearranging tenant-in-common interests
• Resolving business disputes
• Non-basis shifting transactions
Chapter 7—Hot Topics in 1031 Exchanges

**Types of Related-Party Exchanges**

- Direct swaps

- Transfer of relinquished property to unrelated party, and acquisition of replacement property from related party

- Transfer of relinquished property to related party, and acquisition of replacement property from unrelated party

**Related Party Planning Opportunities**

*Use Unrelated Parties*

- Domestic partners
- Step parents or step children
- Cousins
- Aunts and uncles
- In-laws
- Ex-spouses
- Entities with not more than 50% common ownership
Related Party Planning Opportunities—cont’d

Opportunity
• Sell relinquished property to unrelated party

• Acquire replacement property from related party, if related party completes her own exchange, and both parties hold replacement properties for at least two years

  **Rationale:** neither party “cashed out” of its investment in property

Related Party Planning Opportunities—cont’d

Opportunity
• Swap undivided interests in property with related party
• Each party ends up with 100% ownership of a smaller parcel
• Probably okay for one party to sell some or all of its replacement property within two years

  **Rationale:** A legitimate business purpose and tax avoidance is not the principal purpose
Related Party Planning Opportunities—cont’d

Opportunity
- Sell relinquished property to a related party
- Acquire replacement property from an unrelated party
- Related party may be able to dispose of relinquished property within two years

**Rationale:** There was no cashing out. The related party began the transaction with cash and will end up with cash.

**Caution:** This seems like it should be an impermissible basis-shift transaction, but the IRS has allowed it.

Related Parties – What Not to Do

**Do Not** purchase replacement property from a related party if the related party does not complete its own exchange.

**Rationale:** this results in the related party “cashing out” its investment in property and often results in basis shifting
Related Parties – Conclusion

- Just because we eat Thanksgiving dinner together, doesn’t mean we’re related (for 1031 purposes)

- Even if we’re related, we might still be able to structure an exchange that will be tax-free

Tips and Tricks

- Clearly define the scope of your engagement

- Make it clear the client is solely responsible to meet all deadlines (e.g., 45-day designation and 180-day timeline)

- Advise clients of the expense and cash-flow impacts caused by 1031 exchanges
Tips and Tricks – cont’d

Emphasize that time is short; Ideally:
• Enter purchase agreement for replacement property before exchange period begins
• Obtain final approval for all permits before the exchange period begins
• Complete all due diligence and obtain financing approval before 45-day deadline
• Close acquisition 10-14 days before 180-day deadline

Recap

• Property must be “qualified”—evaluate substance and form
• A weak tax opinion won’t overcome accuracy-related penalties
• Reverse exchanges can provide some flexibility
• Improvement exchanges can provide avenue to invest in taxpayer-specific improvements and may have more time flexibility now (subject to risk of IRS attack)
• Related-party exchanges can be completed tax-free with proper planning
Chapter 8
You Can’t Run and You Can’t Hide: A Primer on Oregon Property Taxation

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Contents
I. Introduction ......................................................... 8–1
II. Property Taxation in Oregon ..................................... 8–1
   A. Property Subject to Taxation; Tax Rates .................. 8–1
   B. State Constitutional Limits on Property Taxes: Measure 50 and Measure 5 . 8–2
III. The Assessment Appeals Process ............................... 8–4
IV. The New Construction and Business Enterprise Zone Exemptions .......... 8–5
   A. The Exemption for Certain New Construction ............. 8–5
   B. The Business Enterprise Zone Exemption .................. 8–6
Multnomah County Department of County Management Changed Property Ratios by Property Class ........................................... 8–9
Presentation Slides .................................................... 8–11
I. INTRODUCTION

Given the mission implicit in the Broadbrush Taxation seminar’s name, the goal of these materials is to provide the non-tax attorney a broad overview of Oregon’s property-tax regime, particularly the system’s overall constitutional and statutory framework. As such, this “10,000-foot view” does not (and cannot) touch on every aspect of the state’s property-tax system. The materials do not, for example, detail the unique provisions for centrally-assessed properties or the process for taxing jurisdictions to foreclose their property-tax liens. But they do give the otherwise uninitiated practitioner the nuts and bolts of how the system works, including when and where to appeal annual property-tax assessments.

The title’s reference to running and hiding acknowledges the plain fact that a taxpayer cannot shield its real property from the government’s eyes or reach. That is why property taxes remain one of the surest revenue-generating bets for governments; it’s hard to create a tax shelter for property taxes when it’s the shelter itself being taxed. But there remain perfectly legitimate avenues for Oregon taxpayers to at least temporarily “hide” their property for assessment purposes. These materials summarize two of the most important ones, the exemption for certain new construction and the Business Enterprise Zone exemption.

II. PROPERTY TAXATION IN OREGON

A. Property Subject to Taxation; Tax Rates

All tangible real and personal property within Oregon is generally taxable. With the exception of centrally-assessed properties like railroads and utilities, intangible personal property is not. Property is assessed as of January 1, which is the date that the property’s real market value (RMV) is determined for assessment purposes. The assessment year is the calendar year. The tax (fiscal) year runs from July 1 of the assessment year to June 30 the following year; the lien

1 For the punishment gluttons among you, the central-assessment statutes are found at ORS 308.505 et seq.
2 Likewise, the intrepid can review ORS 312.005 et seq. to find out when and how property-tax liens are foreclosed.
3 While the same cannot be said of personal property, most personal property of any import to taxing authorities is too large and cumbersome to easily spirit away or otherwise hide, e.g., printing presses, machine tools, and the like.
4 ORS 307.030(1).
5 See generally ORS 308.505 et seq. (central-assessment statutes, including those defining property subject to central assessment).
6 ORS 307.030(2).
7 ORS 308.210(1).
8 ORS 308.007(1)(b).
9 ORS 308.007(1)(c).
date is the first day of the tax year, July 1.\textsuperscript{10} For example, the 2017 assessment corresponds to the tax year running from July 1, 2017 to June 30, 2018, with July 1, 2017 the lien date for 2017-18 taxes.

Oregon property taxes are calculated based on a rate system. Each governmental taxing district has a permanent tax rate,\textsuperscript{11} with any local option levies, general obligation bonds, and qualifying special assessments added to that rate.\textsuperscript{12} All taxable property types are taxed at the same rate.\textsuperscript{13}

**B. State Constitutional Limits on Property Taxes: Measure 50 and Measure 5**

Before the 1997-98 tax year, Oregon property taxes were assessed based on the assessed property’s market value. That is, a property’s market and assessed values were one and the same for tax purposes. But in May 1997 voters overhauled Oregon’s property-tax assessment and taxation regime by a constitutional amendment known as Measure 50.\textsuperscript{14} Measure 50 generally limits the growth rate of property value subject to taxation; this limit is based on a property’s “maximum assessed value” (MAV).\textsuperscript{15} In the 1997-98 tax year, the MAV for each property in existence that year was set at 90% of the RMV on the roll for the 1995-96 tax year.\textsuperscript{16}

For subsequent years, increases in MAV are limited to 3% per year,\textsuperscript{17} subject to certain exceptions.\textsuperscript{18} New construction, major improvements to an existing structure, omitted property added to the tax rolls, and the subdivision, partition, or rezoning of property are exception events that can increase MAV by more than 3%.\textsuperscript{19} The value attributed to these changes is called “exception value.” The MAV for “exception” RMV is computed by multiplying the exception

\textsuperscript{10} ORS 311.405(2).
\textsuperscript{11} See ORS 310.236 (prescribing calculation of permanent tax rates in light of Measure 50, described supra).
\textsuperscript{12} See id.
\textsuperscript{13} See ORS 310.100 (“Each ad valorem property tax of a taxing district shall apply to all the taxable property of the district...as shown by the assessment roll last compiled by the assessor.”).
\textsuperscript{14} Measure 50 is embodied in article XI, section 11 of the Oregon Constitution.
\textsuperscript{15} See ORS 308.146 (inter alia, defining MAV and limiting the assessed value of property to the lesser of its MAV or RMV). As a result of Measure 50’s passage, the uniformity-of-taxation provisions found elsewhere in the state constitution were abrogated, at least insofar as they apply to property taxes. See Or. Const. art. XI, § 11(18) (“Section 32, Article I, and section 1, Article IX of this Constitution [both requiring uniformity of taxation], shall not apply to this section [11 of Article XI].”); see also Paris v. Dept. of Rev., 19 OTR 519, 522 (Or. T.C. 2008) (“Measure 50 neutralized uniformity requirements with respect to [assessed value].”).
\textsuperscript{16} Or. Const. art. XI, § 11(1)(a).
\textsuperscript{17} Or. Const. art. XI, § 11(1)(b).
\textsuperscript{18} Or. Const. art. XI, § 11(1)(c).
\textsuperscript{19} Id.; see also ORS 308.146(3).
RMV of the property by the changed property ratio (CPR).\textsuperscript{20} The CPR, in turn, is determined county-wide by dividing the average MAV by the average RMV for the same property class of unchanged property (i.e., non-exception property) throughout the county.\textsuperscript{21} Under this calculation, the higher the average RMV relative to the average MAV, the lower the CPR and vice versa.

A property’s RMV and MAV are calculated annually. Oregon law defines RMV as the amount in cash that could reasonably be expected to be paid by an informed buyer to an informed seller, each acting without compulsion in an arm’s-length transaction occurring as of the assessment date (January 1) for the tax year.\textsuperscript{22} This definition prescribes a statewide standard. The assessor must value all taxable property at 100% of its RMV pursuant to the value-in-exchange standard of ORS 308.205.\textsuperscript{23} While the sale of a property is important, it will not dictate its RMV. Instead, the sale will be considered along with other sales and relevant market data to establish the property’s RMV. The assessor then taxes the property on the lesser of its RMV or MAV.\textsuperscript{24} That taxable base is the assessed value (AV) to which the tax rate is applied.

Oregon property taxes are also subject to a constitutional amendment approved by voters in 1990 known as Measure 5. Under Measure 5, the amount of property taxes that can be collected from each property tax account cannot exceed $10 per $1,000 of RMV for general government services and $5 per $1,000 of RMV for education services.\textsuperscript{25} Where application of the tax rate would result in a property’s taxes exceeding the Measure 5 limits, the taxes are lowered (“compressed”) to meet these limits.\textsuperscript{26} Approved bond levies are not subject to Measure 5 limits.\textsuperscript{27}

\textsuperscript{20} See ORS 308.153 (for new property and new improvements to property) & 308.156 (for property partitioned, subdivided, rezoned, or added to the roll as omitted property, as well as property disqualified from an exemption or special assessment program).

\textsuperscript{21} Id.

\textsuperscript{22} See Or. Const. art. XI, § 11(11)(a)(A) (“The real market value of property shall be the amount in cash that could reasonably be expected to be paid by an informed buyer to an informed seller, each acting without compulsion in an arm’s length transaction occurring as of the assessment date for the tax year, as established by law.”); see also ORS 308.205(1) (same).

\textsuperscript{23} ORS 308.232.

\textsuperscript{24} Or. Const. art. XI, § 11(1)(f) (“Each property’s assessed value shall not exceed the property’s real market value.”); see also ORS 308.146(2) (“the assessed value of property...equals the lesser of: (a) The property’s maximum assessed value; or (b) The property’s real market value.”) (emphasis in original).

\textsuperscript{25} Or. Const. art. XI, § 11b(1).

\textsuperscript{26} Or. Const. art. XI, § 11(11)(c) (upon property taxes exceeding Measure 5 limits, requiring that first local options taxes be reduced proportionally and then, if the limits remain exceeded even after eliminating local option taxes, requiring proportionate reduction in all other categories of
III. THE ASSESSMENT APPEALS PROCESS

With one important exception,28 the owner of taxable property, or any person who holds an interest in the property that obligates the person to pay taxes imposed on the property (for example, a tenant under a commercial lease), may petition the local board of property tax appeals (BoPTA) for relief upon receiving its annual tax statement.29 BoPTA members are selected by the county clerk,30 trained by the Oregon Department of Revenue,31 and tasked with hearing petitions for the reduction of a property’s RMV, AV, and/or MAV.32 A taxpayer unhappy with its tax assessment must file a petition with the BoPTA clerk by December 31 of the assessment year in question.33

The BoPTA convenes on or after the first Monday in February of each year and adjourns by April 15.34 During its session the BoPTA decides all petitions filed by the preceding December 31 deadline,35 including by holding hearings for those taxpayers who request one.36 The BoPTA must issue a written decision on each petition, which is mailed to the post-office address designated in the petition.37 A taxpayer unhappy with the BoPTA’s decision can then appeal it to the Magistrate Division of the Oregon Tax Court.38 The taxpayer’s deadline to do so is thirty (30) days from the decision’s issuance date.39

The Magistrate Division is one of the Oregon Tax Court’s two divisions, the other being the higher-level Regular Division. Established with the goal of resolving property-tax (and other tax-related) appeals in a less formal, more efficient fashion, the Magistrate Division is not a court of

property taxes [excepting bonds, which are not subject to Measure 5’s limits] until the limits are no longer exceeded).

27 Or. Const. art. XI, § 11b(3).
28 That exception being the assessment of state-appraised industrial property, which under ORS 305.403 is appealed directly to the Oregon Tax Court by December 31.
29 ORS 309.100(1).
30 ORS 309.020(1)(a).
31 ORS 309.022(1).
32 ORS 309.026(2).
33 ORS 309.100(2).
34 ORS 309.026(1).
35 ORS 309.110.
36 ORS 309.100(5).
37 ORS 309.110(1).
38 ORS 309.110(7); see also ORS 305.501(1) (“an appeal to the tax court shall be heard by a tax court magistrate unless specially designated by the tax court judge for hearing in the regular division.”).
39 ORS 305.280(4).
YOU CAN'T RUN AND YOU CAN'T HIDE:
A PRIMER ON OREGON PROPERTY TAXATION

by Sam Zeigler, CKR Law Group, P.C.

Chapter 8—You Can’t Run and You Can’t Hide: A Primer on Oregon Property Taxation

record and the magistrate judge is not held to the Oregon rules of evidence or other “technical or formal rules of procedure.”

A party—whether the taxpayer, assessor, or, in some cases, the Oregon Department of Revenue—dissatisfied with the magistrate judge’s decision can appeal it by filing a complaint with the Tax Court’s Regular Division. The deadline to do so is sixty (60) days after the date that the magistrate’s written decision is entered in the record.

Unlike the Magistrate Division, the Regular Division is a court of record where the rules of evidence apply. Trials and other proceedings before the Regular Division are de novo (that is, “anew” and without any deference to the magistrate’s conclusions of law or fact) and without a jury.

Finally, the “sole and exclusive remedy” of a party that has exhausted all of its BoPTA and Tax Court avenues is to appeal to the Oregon Supreme Court. It must do so within thirty (30) days of the date that the Regular Division’s judgment is entered in the court’s register. The Supreme Court’s scope of review is limited to “errors or questions of law or lack of substantial evidence in the record to support the tax court’s decision or order.”

IV. THE NEW CONSTRUCTION AND BUSINESS ENTERPRISE ZONE EXEMPTIONS

A. The Exemption for Certain New Construction

Oregon affords limited tax relief for certain new construction. The construction-in-process (CIP) exemption cancels the assessment of a commercial property under construction. The property must be new construction or an addition to an existing structure and in either case built for the production of income, for example, apartments or a manufacturing facility. Properties constructed for the onetime generation of income, such as condominiums, can qualify for this

40 ORS 305.501(4).
41 ORS 305.501(5).
42 Id.
43 ORS 305.405(1).
44 ORS 305.425(3) (“All hearings and proceedings before the tax court judge shall be in accordance with the rules of practice and procedure promulgated by the court, which shall conform, as far as practical to the rules of equity practice and procedure in this state.”).
45 ORS 305.425(1).
46 ORS 305.445.
47 ORS 19.255(1).
48 ORS 305.445.
49 See generally ORS 307.330.
50 ORS 307.330(1).
exemption.\textsuperscript{51} Properties centrally assessed by the Oregon Department of Revenue are specifically excluded.\textsuperscript{52}

To qualify, the property must be in the process of construction on January 1 of the tax year in which exemption is sought.\textsuperscript{53} The property cannot have been used or occupied, nor have generated any income, before that date.\textsuperscript{54} Finally, if the building is not a manufacturing facility, then the construction must take more than one year from commencement.\textsuperscript{55} Commencement occurs when work has begun or the foundation is partially or wholly laid; site preparation or demolition of existing improvements do not constitute “commencement” for purposes of the CIP exemption.\textsuperscript{56}

To obtain the CIP exemption, a taxpayer must file the appropriate application with the county assessor by April 1 of the assessment year for which the exemption is sought.\textsuperscript{57} The exemption is available for up to two consecutive tax years; a separate application must be filed for each year that the exemption is claimed.\textsuperscript{58}

\textbf{B. The Business Enterprise Zone Exemption}

Oregon also offers a property-tax exemption for certain eligible businesses owning qualifying property within a state-sanctioned “enterprise zone.”\textsuperscript{59} To be eligible for the business enterprise zone (BEZ) program, a business firm must, among other things, be engaged (or proposing to engage), within the enterprise zone, in the business of providing goods, products or services to other businesses or organizations through activities such as manufacturing, assembly, fabrication, processing, shipping, or storage; retail businesses such as restaurants and stores are explicitly excluded from the BEZ program’s reach.\textsuperscript{60}

Among the eligible firm’s property that can qualify for the BEZ exemption are newly constructed buildings or structures; new additions to or modifications of an existing building or structure; and certain qualifying machinery, equipment, and personal property that is installed on

\begin{itemize}
\item \textsuperscript{51} OAR 150-307-0430(2)(a).
\item \textsuperscript{52} ORS 307.330(1).
\item \textsuperscript{53} ORS 307.330(1).
\item \textsuperscript{54} Id.
\item \textsuperscript{55} Id.
\item \textsuperscript{56} Id.; see also OAR 150-307-0430(1)(d) (defining “In the process of construction”).
\item \textsuperscript{57} ORS 307.340(1).
\item \textsuperscript{58} See ORS 307.330(1) (providing for up to two consecutive years of exemption); ORS 307.340(1) (requiring that taxpayer file “sufficient documentary proof” of qualification by April 1 for each year of exemption sought).
\item \textsuperscript{59} See generally ORS 285C.045 \emph{et seq.} (Oregon Enterprise Zone Act).
\item \textsuperscript{60} ORS 285C.135 (setting forth requirements to qualify as an “eligible business firm”).
\end{itemize}
the property.\textsuperscript{61} The exemption does not cover land and rolling stock, which remains otherwise taxable.\textsuperscript{62}

The BEZ exemption is available for up to five (5) consecutive tax years.\textsuperscript{63} Moreover, the exemption is in addition to the CIP exemption described above, as well as a similar two-year construction-in-process exemption available under the BEZ statutes.\textsuperscript{64} The result is that an eligible business firm may obtain up to seven (7) tax years of exemption for qualifying property: Two (2) years while under construction/installation (using either—but not both—of the CIP exemption or its similar BEZ counterpart) plus up to five (5) years under the BEZ program.

Finally, an eligible business firm seeking the BEZ exemption generally must apply for the exemption \textit{before} the commencement of direct site preparation activities or the construction, addition, modification, or installation of qualified property in the enterprise zone and \textit{before} the hiring of eligible employees.\textsuperscript{65} Failure to timely file the BEZ exemption application may result in the enterprise zone sponsor denying the application in its entirety.\textsuperscript{66}

\textsuperscript{61} ORS 285C.180(1) (identifying qualifying property types).
\textsuperscript{62} ORS 285C.180(3) (identifying non-qualifying property types).
\textsuperscript{63} ORS 285C.175(2).
\textsuperscript{64} See ORS 285C.170 (BEZ construction-in-process exemption).
\textsuperscript{65} ORS 285C.140(1)(a).
\textsuperscript{66} Although ORS 285C.140(12) authorizes the Oregon Department of Revenue to waive the filing deadline at its discretion. \textit{See also} OAR 150-285-3100 (providing that Department can waive filing deadline for “good and sufficient cause”).
### Changed Property Ratios by Property Class

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<th>(0XX) Miscellaneous</th>
<th>(1XX) Residential</th>
<th>(2XX) Commercial/Local Industrial</th>
<th>(3XX) State Industrial</th>
<th>(7XX) Multi-Family</th>
<th>(8XX) Recreational</th>
<th>(9XX) Machinery &amp; Equipment</th>
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</table>

Residential includes single family, condominiums, 2-4 plexes, mobile homes, floating property, tract land and improvements on farm and forestry property.
Commercial includes moorages and until 1999 billboards, at which time billboards became 0XX.
Multi-Family applies to 5 units and up.
SB1529 created a separate class for Machinery & Equipment effective for the 2012/2013 tax year.
Personal Property excludes mobile homes, floating property and moorages.
Property Subject to Taxation

- All tangible real and personal property is generally taxable.
- With the exception of centrally-assessed properties (e.g., utilities and railroads), intangible property is not taxable.
- Assessment date is January 1st.
- Tax (fiscal) year is July 1st to June 30th.
- Lien date is July 1st, first day of tax year.
- 2017 assessment (1/1/17) corresponds to 2017–18 tax year (7/1/17–6/30/18).
State Constitutional Limits: Measure 50

- Real market value (RMV) = hypothetical arm’s-length sale on assessment date; a value-in-exchange standard.
- Measure 50 set maximum assessed value (MAV) for all taxable property in existence as of 1997-98 tax year at 90% of the RMV on the roll for the 1995-96 tax year.
- Going forward, Measure 50 (generally) limits the growth rate of property value subject to taxation (i.e., the MAV) to 3% per year.
- Assessed value (AV) = lower of MAV or RMV.
  - As a result, taxpayer gets protection of MAV in bull market (like this one) and benefit of lower RMV in bear market.
- Exceptions to general 3% limitation—
  - New construction or new improvements
  - Partition or subdivision
  - Rezoning and use consistent with rezoning
  - First taken into account as omitted property
  - Disqualification from exemption or special assessment

State Constitutional Limits: Measure 50 (continued)

- Calculation of “exception” MAV—
  - Multiply property’s RMV by applicable “changed property ratio” (CPR)
  - CPR determined county-wide, by property class
  - CPR = average MAV ÷ average RMV for property class
  - Higher the average RMV relative to average MAV, the lower the CPR
- Example—
  - County values new apartment complex at $10 million
  - County-wide CPR for multifamily class = 0.3297
    - (very high multifamily RMVs in Multnomah County, hence very low CPR applied to new multifamily construction)
  - New MAV = $3,297,000 ($10M RMV x 0.3297 CPR)
  - Because RMV is $10 million, the apartments’ AV will be the lower MAV ($3,297,000)
State Constitutional Limits: Measure 5 and “Compression”

- Limits amount of taxes that can be collected from each property tax account—
  - No more than $10 per $1,000 of RMV (i.e., 1% of RMV) for general government services
  - No more than $5 per $1,000 of RMV (i.e., 0.5% of RMV) for education services
- Importantly, limitation applies to RMV—not AV.
- Limitation does not apply to voter-approved bonds.
- If taxes exceed one or both of Measure 5 limits for a particular tax account, then the taxes are “compressed” (reduced) until they meet the Measure 5 limits.
- As a result of Measure 50’s protections, Measure 5 compression not as frequent. Most likely to occur when an assessment is appealed and the RMV is reduced below the RMV trigger point for compression.

The Assessment Appeals Process

- Assessment appeals are filed annually—
  - File petition with county BoPTA (in most cases)
  - File complaint directly with Oregon Tax Court (for state-appraised industrial property)
  - In either case, filing deadline is December 31st of assessment year
- Petition heard and decided by BoPTA between February and April.
- 30-day deadline to appeal BoPTA decision to Magistrate Division of Oregon Tax Court.
- Magistrate Division not a court of record and not held to “formal rules of procedure.”
The Assessment Appeals Process

- Party dissatisfied with Magistrate decision must file complaint with Tax Court’s Regular Division within 60 days of decision’s entry.
- Regular Division is a court of record where rules of evidence apply. Trial is de novo, so no deference to Magistrate decision.
- “Sole and exclusive remedy” of party unhappy with Regular Division decision is to appeal to Oregon Supreme Court.
- Notice of appeal must be filed within 30 days of Regular Division’s judgment.
- OSC’s standard of review is limited to “errors or questions of law or lack of substantial evidence in the record to support the tax court’s decision or order.”

The New Construction Exemption

- The construction-in-process (CIP) exemption cancels assessment of commercial property under construction.
- Must be new construction or addition to existing structure and in either case built for producing income, e.g., apartments, retail, or manufacturing.
- Property must be under construction as of January 1st of the tax year for which exemption sought.
- Property cannot have been used or occupied, nor have generated income, before that date.
- If building not a manufacturing facility, then construction must take at least one year.
- Exemption available for up to two tax years; separate application must be filed each year.
The Business Enterprise Zone Exemption

- Applies to eligible businesses owning qualifying property within a state-sanctioned business enterprise zone (BEZ).
- Business must provide goods, products, or services to other businesses; retail businesses that sell to generate public excluded.
- Qualifying property of eligible business includes newly constructed buildings, machinery and equipment, and personal property installed on site.
- Land and rolling stock excluded.
- BEZ exemption exempts qualifying property for up to five tax years.
- In addition to CIP exemption already described.

Questions?

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